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*An Essay on the subject proposed by the Royal Irish Academy, viz. "An Essay on the nature and influence of the Ancient Irish Institutes, commonly called Brehon Laws, and on the number and authenticity of the Documents whence information concerning them may be derived; accompanied by Specimens of Translations from some of their most interesting parts." With an Appendix, containing a Catalogue of the principal Ancient Irish Laws, to be found in the MSS. Library of Trinity College, and other Libraries. A Prize Essay. By Edward O'Reilly.*

Read June 28, 1824.

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" ʒbajɲ ɤɲɣ (ɔ. an ɲɔ ɤɛɲaðac ɤɔɲɤactɲac) ɲɔ ɥaɔɣɭɔɕɛaɲ ɲac mɔɲɛɕeamaɲ maɲa  
ɤaɣac ɤɔɲɔɲɛ ɤɔɣɛaɲ."

Uðacɕ ʉɔɔɔaɲɔ.

" Say unto him (*i. e. the King Fearadhach Fionnfachtnach*) every Judge is not to be elevated if  
he be not confessed to be skilled in the truth."

Testamentary Precept of Moran.

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## PRELIMINARY OBSERVATIONS.

**T**HE ancient Institutes of Ireland by English writers generally, but improperly, called *Brehon Laws*, are so little known to modern times, that some have absolutely denied that such documents exist, and have boldly asserted that the ancient Irish never had a code of

*written* laws ; that their *oral* laws were calculated only for a nation of barbarians, and were as variable and as numerous as there were different tribes in the Island. Others admit, that the Irish had written laws, at a very early period of their history, but exclaim against them as unjust and oppressive, having in every respect an immoral tendency, destructive to the happiness of the people and preventing the improvement of the country :—whilst on the other hand, there have not been wanted some liberal and candid writers of the sister country, of no small celebrity in the literary world, who assert that the Irish Institutes were founded in reason and justice ; that they were administered with strict impartiality ; and, consequently, that they afforded protection to all classes of people, without distinction, and were productive of happiness and comfort to the nation, leaving none in distress or in a state of pauperism.

To lay open these adverse opinions, and examine them by the test of truth ; to state fairly from incontrovertible facts what was the nature and the tendency of the ancient Irish laws, and to direct the reader to where copies of those laws of considerable antiquity are to be found, is the design of the following pages. On an inquiry into this matter, so much talked of and so little known, even to professed Irish scholars and antiquaries, and upon which so many conflicting opinions have been formed, the author of this tract finds considerable difficulty to proceed with that clearness and precision which so interesting a subject deserves. In matters of conjecture, it is with no small degree of diffidence that he submits on the nature and influence of the ancient laws of his country such of his opinions as are in opposition to those delivered by eminent writers who have viewed those Institutes in a different light. But, when supported by matter of fact, to which, in pursuit of his subject, he has

as closely as possible adhered, he offers his opinions with confidence, and courts the investigation of the candid and intelligent.

To those who deny, that the ancient Irish had written laws, the best answer, perhaps, that could be given, would be a reference to the documents in which they are to be found ; or to the extracts from those documents exhibited in the following pages. It may not, however, be improper to observe, that, if even these ancient monuments did not now exist, it would not amount to a proof that such have not existed in former times ; and, if even the Irish had not any *written* laws at an early period, still it would not be a sufficient proof that the natives were a lawless race, and a nation of barbarians, which seems to be what was intended by those who have asserted that they had not any *written* law. If the absence of *written* law in a nation were a proof of barbarism, the Athenians must have been barbarians ; for they had not any such laws for the long period of one thousand years, until at length they received them from Draco, in the first year of the 139th Olympiad (A. M. 3326), a hundred years after the period at which our monarch, Ollamh Fodhla, (Olav Folla) promulgated his code, for the better government and improvement of his people. The same argument would also hold good against the English themselves, whose common law remained *unwritten* for ages, although by it their country was governed, and justice administered, long before the existence of statute laws ; and by it, even at the present day, innumerable important controversies are decided.

But that the Irish were not without laws, and even *written laws*, at a very early period, the concurrent testimony of some of the most respectable writers of English birth, or descent, as well as of many of our native writers, shall be hereafter submitted to the consideration of the candid reader ; and if it shall appear, that the Irish have had

laws at an early period ; that those laws, or the major part of them, were brought in by the first Milesian or Ibero-Celtic colony ; or were soon after framed from national customs, and that they continued to be the law of the land to the commencement of the seventeenth century, without suffering any material change in consequence of the invasion of the Danes and Norwegians, at the latter end of the eighth century, or that of the Anglo-Normans in the middle of the twelfth ; it may be presumed, that a publication of them must infallibly furnish materials to the historian and antiquary, of more importance than, perhaps, any other European nation could supply.

The Irish historians agree, that Ireland received colonies from Gaul and Britain, antecedent to the Scoto-Iberian colony under the sons of Gollamh (Gullav), or as he is otherwise called *Mile Spaineach* (*the Spanish hero*), from whom the ancient Irish families derive the name of Milesians. These colonies, in process of time, became so intermixed as to form but one people, observing the same customs, and subject to the same laws. The Irish Institutes must, therefore exhibit a picture of ancient Celtic manners, and throw more light on the history and antiquities of several ancient nations, and particularly those of Britain and Ireland than can, probably, be obtained from any other quarter. Several learned foreigners have declared, that a knowledge of the Irish *language*, and of Irish *history*, are necessary for the complete elucidation of the history and antiquities of ancient Celtic nations. Upon this subject the opinions of the late Doctor Johnson, and the late Edmund Burke, are so well known as to render quotations from them unnecessary. But it may not be improper to observe, that, if the Irish *language* and *history* be necessary to elucidate the history of other ancient nations, the knowledge of the Irish *laws* is of much more importance ; as by

its aid several passages in ancient history (Irish as well as others) will appear luminous, which are now enveloped in obscurity.

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## II. *The Irish had written laws at an early period.*

That the Irish had *Breitheamhuin* (Brei-hoo-in, *i. e.* judges), and *Reachtairidh* (Ragh-ta-ree, *i. e.* lawgivers), from the earliest period of their history, is asserted by all the native *Seanchaidheadh* (Shan-a-hee, *i. e.* historians and antiquaries). The Milesian colony, on their first landing in Ireland, were attended by Amergin, in the quality of judge,\* and the office was never abolished as long as the Irish continued to be governed by their own laws. That the Irish laws were committed to writing, little doubt will be entertained by those who consider the great love for literature, for which the ancient Irish were so remarkable. It is well known, that they took the greatest possible pains in committing to writing the records of the nation, their pedigrees, and the productions of their bards; and surely it is not probable, that, whilst they were so careful in the preservation of these things, they were so silly as to neglect the preservation of their laws, upon which so much of the happiness and quiet of the people depended.

There is still extant an ancient Glossary † of the Irish language,

### x 2

\* See the *Leabhar Gabhala*, or book of Invasions, contained in the book of Leacan, and another of the same name compiled by Michael O'Cleary, and others.—For an account of these books, see “Transactions of the Ibero-Celtic Society, p. p. 114. 186. 189.

† Doctor Ledwich denied the existence of this ancient document, as others have denied the existence of Irish written laws. The poor Doctor, however, was one of the worst persons in the world to rely on as authority, on Irish historical or literary subjects. He was so totally ignorant of our language, that if he had the Glossary before him he could not read or understand

by some writers supposed to be written by Cormac Mac Art, monarch of Ireland, who commenced his reign A. D. 254, but by others more generally, and certainly with more truth, attributed to Cormac Mac Cullionan, King of Munster, and Archbishop of Cashel, who was killed in the battle of *Beallach Mughna* (Balagh Moona) A. D. 908. In this tract reference is frequently made to the ancient laws, and the quotations from these Institutes are numerous.

In the *Leabhar Gabhala* (Leavar Gavawla) or book of Invasions, or Conquests, compiled by the o'Clerys, we find the following passage—" *Ro ghabh tra ollamh Fodhla mac Fiacha Fionnscothaigh righe Eireann. As aire do gairthi Ollamh Fodhla de ar a bheith na righ agus na ollamh. Eochaidh a ched ainm. Do raghsat fir Eireann Ollamh in a righ uaiste, ar iomat a fheasa agus a fhoghloma, do choimhed a reachta agus a riaghla, agus ar a chalmacht aga niomcosnamh i ccathaibh agus i ccongghalaibh eachtrann. As e cedas do ordaigh toiseach ar gacha triocho ced ; brughaidhe ar gach baile agus a ffoghnamh uile do righ Erenn. As e cedna righ las a ndearna Fes Teamhrach a muir Ollamhain i tTeamhraigh, &c.*"—" Then *Ollamh Fodhla* (Ollav Fólle) son of *Fiacha Fionnscothaigh* (Feeagha Finn-scohay) took the sovereignty of Ireland. The reason that they called him Ollav Folla was on account of his being a king and an *Ollav* (a Professor or Doctor). His first name was Eohy. The men of Ireland elected Ollav as king over them, on account of the greatness of his knowledge and his learning, *to preserve their laws and regulations*, and on account of his valor to defend them in bat-

a line of it. If he were capable of reading the book, he might have satisfied himself of its being still extant, as he had access to the College Library, where in Class H. 35. he might have found an ancient copy written on vellum. The copies in private hands are numerous.

“ tles and in foreign wars. It was he who first ordained a chief  
 “ over every district and a *Brughaidh* (Brooee) over every town,  
 “ and all their services to the Monarch of Ireland. He was the  
 “ first king by whom was held the Fes \* of Tara, in the College  
 “ of Professors in Tara, &c.”

The Monarch Ollav Folla ascended the throne of Ireland A. M. 3236, and reigned forty years. By the above quotation we see, that he not only promulgated laws himself, but that one cause of his being chosen by the people of Ireland to rule over them, was on account of his great knowledge and learning by which he might  
 “ *preserve the laws and regulations already established.*”

It would perhaps be unnecessary to produce further authorities from *native* Irish writers, to prove the existence of *written* laws in this country at an early period ; but on this subject it may not be improper to cite the authorities of Archbishop Usher, Edward Lhwyd, author of the *Archæologia Britannica*, Sir James Ware, and Doctor Nicholson, Bishop of Derry. The first of these, in his  
 “ *Discourse shewing when and how the imperial laws were received by the old Irish,*” says, “ The Irish never received the Imperial Law, but used still their own Brehon Laws, which consisted partly of the ordinances enacted by their kings and chief governors, whereof THERE ARE LARGE VOLUMES STILL EXTANT IN THEIR OWN LANGUAGE.”

The learned Welsh antiquary, Edward Lhwyd, in a † letter to the Royal Society, informs that learned body, “ that he had procured, in divers parts of Ireland, about twenty or thirty manuscripts on parchment ; and though he consulted O’Flaherty, au-

\* Fes, a parliament or assembly of the States of Ireland, held at the commencement of winter, in every third year.

† Published in Baddam’s abridgment of the Philosophical Transactions, vol. 5. p. 492.



“ thor of the Ogygia, one of the chief Irish critics, and several  
 “ others, they could scarce interpret one page. What is most valu-  
 “ able among them,” adds Mr. Lhwyd, “ are their old laws, *which*  
 “ *might give some light to the curious as to their national customs.*”  
 Several of those volumes, with memorandums in Mr. Lhwyd’s hand-  
 writing, accounting for the manner in which he obtained them, are  
 now in the Library of Trinity College, Dublin. These volumes  
 were some years since presented to the Library by Sir John Sea-  
 bright, in the hope that the learned Members of that College would  
 cause some of the most valuable of them to be published, with  
 literal translations, into English or Latin.\*

Sir James Ware, in the eighth chapter of his “ Antiquities of Ire-  
 “ land,” † says, “ There are yet extant, as I have heard, some  
 “ books in Irish, containing the laws of some of the ancient kings  
 “ of Ireland before the coming of the English, *which doubtless are*  
 “ *very necessary to understand the government among the ancient*  
 “ *Irish, AND DESERVE A FULL SEARCH.*”

The Right Rev. Doctor Nicholson, Bishop of Derry, says,—  
 “ Our historians generally agree that there was, *very early*, a body  
 “ of laws in this kingdom ; and they do as unanimously allow that  
 “ they grew up to maturity, from a very weak estate at first.—By the  
 “ guidance of their law maxims, and other like rules, the *Brehons*  
 “ (or judges) of several provincial kings, determined all controver-  
 “ sies brought before them ; and their general axioms were the  
 “ *leges Brehonicae, whereof several specimens are to be seen in our*  
 “ *public and private libraries.* The most complete collection that  
 “ we have of these is in the Duke of Chandois’ library, and even  
 “ this is far from being perfect. It contains twenty-two sheets and

\* See Edmond Burke’s letter to General Valancy.

+ Folio edition, Dublin, 1705, page 23.

“ a half, close written in two columns; the former whereof is not  
 “ quite legible, and full of abbreviated words. It puts me in mind  
 “ of *HOEL DHA's* Laws; several copies whereof (that I have seen)  
 “ are in the like condition: but as there is now an accurate edition  
 “ of these in the press of London, so I am willing to hope that I  
 “ may live to see the like care taken of our *Brehon Laws*. *This I*  
 “ *dare promise the antiquaries and historians of this kingdom, that*  
 “ (if they fall into the hands of as skilful a publisher as the Welsh  
 “ laws are in) *we shall have a very delightful and instructive view*  
 “ *of many ancient rites and customs of this country, which, as yet,*  
 “ *continue in the utmost darkness and obscurity.*”\*—Again, speak-  
 ing of the law books of the Irish, he says,—“ Mr. Conroy can  
 “ furnish out a very large addition to this stock. He has the de-  
 “ cisions or reports of no fewer than thirty-three of our ancient  
 “ Dempsters, the oldest whereof are judgments given in the first  
 “ century after our Saviour's Incarnation, and the youngest in the  
 “ tenth. For some of these he acknowledges himself indebted to  
 “ Mr. P. Mahon, the present worthy Dean of Elphin.”†

Here we have the authority of Cormac and others to show, that  
 the Irish had laws long previous to his day; and we have the au-  
 thority of candid and learned English writers to prove, that several  
 volumes containing copies of those laws were extant so late as the  
 beginning of the last century. The following pages will show, that,  
 at the present day, there are in existence several copies of the same  
 laws contained in manuscripts of great antiquity, in public and pri-  
 vate libraries. We have also the authority of those liberal and  
 learned writers to state, that the ancient laws of Ireland are “ capa-  
 “ ble of giving light to the curious as to our national customs; that

\* Irish Historical Library, p. p. 133, 134.

† Ibid. Appendix p. 245.

“ doubtless they are very necessary to understand the form of  
 “ government among the ancient Irish, and deserve a full research ;”  
 and that, from a publication of them, “ we shall have a very delight-  
 “ ful and instructive view of many ancient rites and customs of this  
 “ country, which as yet continue in the utmost darkness and ob-  
 “ scurity.”

For the existence of some of the ancient Irish written laws, so low as the reign of James the first, we have the authority of Sir John Davis, who, in his first letter to the Earl of Salisbury, \* mentions an ancient Roll, containing an account of the various articles payable to Maguire, Chief of Fermanagh, by the subordinate chieftains, or heads of tribes, within his principality. The Roll was kept by O'Brislane, the principal Brehon of the country. It was written on both sides in a fair Irish character, and it was with great difficulty he could be prevailed upon to suffer it out of his hands to be copied.

But that the ancient Irish laws did exist, and were even in force, down to the days of James the first, does not depend upon individual authority ; nor are there wanted proofs to show, that they were in some districts practised so late as the latter end of the unfortunate reign of the first Charles. To exclude those laws from the English pale, an act was passed in the parliament held in Kilkenny in the fortieth year of the reign of Edward the third. By this act it appears, that the Irish laws had been pretty generally adopted by the English colonists in preference to those of their own native country. Hence it may be concluded, that these English conceived the Irish laws to be preferable to their own ; and it may not be improper to remark, that in the Anglo-Irish Parliament held in the 33d and 35th

\* Historical Tracts, 8vo. Dublin 1787, page 253.—Collect. de Reb. Hib. Vol. I. p. 159.

years of Henry the Sixth, acts were passed making the English Chief, or head of a family, accountable for his sons and his dependants, and liable to be punished for any crimes they might happen to commit, in the same manner as the Irish laws made the whole tribe accountable for the crimes of any of its members. But the Statutes of Kilkenny, it would appear, did not abolish the Irish laws, even amongst the English colonists; for instances are not wanted to show, that by those laws many of the great English settlers regulated their differences, so low down as the reign of Elizabeth. And from all the letters patent, bestowing or granting offices, during the entire reign of Charles the First, it is evident that even then the Irish laws were not totally abolished. For, in each of these patents, clauses are inserted, binding the patentee, under the forfeiture of his grant, and all the benefits to be derived from it, that “ he shall cause all  
 “ his family, &c. to use the English language, and that he shall, as  
 “ far as his power extends, abolish the *Brehon law*, and establish  
 “ the common law of England.”

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III. *The Irish laws at the commencement of the seventeenth century, varied but little from what they were at an early period of Irish history.*

That the Irish had written laws at a much earlier period than some writers are willing to allow, has, it is submitted, been proved in the foregoing pages. That these laws were first promulgated in a very remote period, the laws themselves bear internal evidence. Therefore, if they have not suffered some very material changes in the lapse of ages, they must, it may be presumed, exhibit a faithful picture of ancient opinions, customs, and manners, that may

tend to elucidate the history, antiquities, manners, and customs of several continental nations, deriving their origin from the same source as the ancient Irish, as well as of the Irish themselves. This opinion we have seen, agrees with the opinion given of them by Archbishop Usher, Sir James Ware, Edward Lhwyd, Doctor Nicholson, Bishop of Derry, and others. Let us now see whether those laws have undergone any, or what changes, by the introduction of Christianity into the Island, or by means of the invasions of the Danes, or of the Anglo-Normans; the only occurrences that could cause any material alteration in those Institutes from their first formation, until the commencement of the seventeenth century.

The Irish, from their earliest settlement in the island, were never conquered, nor even invaded by any foreign nation, until about the year of our Lord 795, when, according to the annals of Inisfallen, the Danes made their first appearance on the coast, and plundered some of the Irish ships; and, in the ensuing year, returning with greater force, made a landing on the shore. In this long period, of about 2000 years duration, they had ample time to establish wise and salutary laws and regulations, for the well-governing of the nation, and the mutual advantages of all ranks of people. That they did establish such laws, and that those laws were founded on the ancient customs observed by their ancestors, as well before their emigration from the continent as since their arrival in Ireland, there is good reason to believe: and, although it is certain, that, in that period, they had frequent intercourse with, and often carried their arms into, the Continent; that they had formed treaties of alliance and friendship with some of the continental nations; and that, in those days, by means of commerce, the ports and harbours of Ireland were much better known to foreign merchants, than those of Britain, as Tacitus asserts, in his life of Agricola; yet, in all that

time, nothing could have occurred, that would cause any intermixture of foreign laws with our native Institutes, except so far as they might have been influenced by the introduction of Christianity. Upon that occasion, shortly after the arrival of St. Patrick, when the Christian religion had become, in a great degree, the religion of the State, we find that the ancient laws underwent a thorough revision by a committee of nine persons, specially appointed for that purpose. This committee consisted of three Kings, three Bishops, and three Antiquaries. The Kings were Laoghair (Laya-rey), Monarch of Ireland, Corc, King of Cashel, and Daire, King of Conaught. The Bishops were St. Patrick, St. Beinin, and St. Cairneach; and the Antiquaries were Ross, Dubhtach (Duvhagh), and Fergus. Of this committee there were eight natives, and only one foreigner; of course it may be presumed, that, in the first instance, no great innovation was made on the ancient customs or habits of the people, except so far as might be necessarily introduced by the change from Paganism to Christianity. In progress of time, some portion of the Canon law might have found admittance into the common law of the country; but it is pretty certain, that no material change was affected by the admixture.

That the *Breithemhuin* (Bree-hoo-in) or judges of the Irish were well skilled in the Canon law no doubt can be entertained; but this might have happened without the native laws having suffered any alteration. Hannibal Rosselli, a Calabrian author, quoted by General Vallancy,\* bears the following testimony to the skill of the ancient Irish in the Canon law. “Olim homines  
“illius Regionis plurimum intendebant Juri Pontificio, erantque op-  
“timi Canonistæ.” “Formerly the inhabitants of this country ap-

“plied themselves very much to the study of the Pontifical law, and “were the best skilled in the Canon law.”—Not having Rosselli’s book at hand, the author of these pages cannot say from what authority he has made this assertion ; but that the Irish judges were of necessity good Canonists, may be inferred from the ancient Irish laws. For, in those it is declared that the Brehon, who is able by his knowledge to decide causes in the three laws, viz. that of the *Feneachus*, or old law, of the *Filidheacht* (*Fillee-aght*) or Poetic law, and the *Breithe Leighinn* (*Bre-he Lay-in*) or Canon law, shall have more extensive privileges and more ample rewards, than if his practice were confined to one only of those branches.\*

In the latter end of the eighth, and to the commencement of the eleventh century, Ireland, in common with France and Britain, was exposed to, and severely suffered from, the predatory incursions of the Danes, and other Northern nations. This invasion of Ireland is, by some writers, represented as having brought about a total subjugation of the Irish people to those barbarians ; as was the case in France and England. Hence it has been concluded, that the ancient customs and laws of the Irish were abolished, and in their stead those of the conquerors established. That this, however, was not the case is evident from the fact, that Ireland never was, at any period, totally subjected to those foreigners. It is true, indeed, that they formed some settlements on the sea-coasts, and often made excursions into the interior of the island, where they burned many religious establishments, plundered and devastated extensive districts, and overthrew numerous armies of the inhabitants. But the annals of the country bear unanimous testimony to the melancholy truth, that in these plundering expeditions they

\* See ancient Law-tract in the book of Ballimote, fol. 181.

were frequently aided by some of the native Irish princes, who, either anxious to diminish the preponderating power of some neighbouring chieftan, or desirous to revenge some real or imaginary injury or insult received, or perhaps, willing to share in the spoils of an opulent neighbour, were always forward to join the common enemy. By this criminal policy of the Irish princes, the foreigners were enabled to support themselves in the possession of a few settlements adjoining to the sea, but they never were able to make any permanent establishment in the interior of the country.

If it were not foreign to the design of this Essay, the author could, from indubitable authority, prove that Ireland was never completely subjugated by these hordes, that obtained such absolute sway in France and England. He could show, that, from their first appearance on our shores, until the total destruction of their power on the plains of Clontarf, in the year 1014, the regular succession of the Irish monarchs and provincial kings was uninterrupted; that not a month, nor even a week, elapsed in which they were not resisted, and frequently defeated with immense loss, by some of the district princes; and that nothing could have prevented their utter annihilation, at any period, from their first landing in the island, but the jealousy and disunion that always unhappily existed between the kings and petty chiefs of the country.

It must however be admitted, that, so far as the power of these foreigners extended, they ruled the people with a rod of iron, and levied the most oppressive tributes and contributions. This excited in the natives a rooted detestation for their oppressors; so much so, that, even to the present times, the lower orders of the native Irish hold the memory of these foreigners in the greatest abhorrence. But their domination was restricted within very narrow boundaries, seldom extending to any considerable distance from the sea-coasts



on five or six places of which only were they ever able to make settlements of any considerable duration. They were, therefore, unable to impose laws on the Irish in those districts where their power did not extend, and these districts comprised the major part of the entire kingdom; and the hatred, which the natives bore to those foreigners, would prevent them from making a voluntary adoption of their customs or laws. Hence it may be concluded, that the invasion of Ireland by those Northerners could have little or no influence on the ancient and long established laws of the nation, or on the manners and customs of the inhabitants; so that, whatever were the laws of Ireland on the arrival of those barbarians, they remained unaltered at the period of their extirpation.

We have now, it is presumed, satisfactorily shown, that the invasion of Ireland, by the Danes and Norwegians, could have caused no variation in the ancient laws of the country; and that, with the exception of the trifling influence, which the introduction of the Christian religion might have had on the national institutions, the Irish laws must have remained as they were originally established by the natives. It remains still to inquire how far those laws may have been influenced by the domination of the English in this island, from their first invasion in the year 1169, to the commencement of the reign of James the First, in the beginning of the seventeenth century.

In the year 1167, Dermot M'Morogh, King of Leinster, of detestable memory, having, for crimes of the blackest atrocity committed by him, been expelled from his kingdom, by the united forces of Conaught and Meath, to which were also joined those of the Danes of Dublin, fled to Henry the Second King of England, then in France, to implore his assistance in the recovery of his kingdom. To induce the English king to comply with his request, he offered to

acknowledge him as his superior lord, and to hold his kingdom of Leinster as a Fief, if through his means his restoration should be effected. Henry, who had, long before, fixed a longing eye on the verdant and prolific fields of Erin, eagerly embraced the proposal of the exiled tyrant, encouraged him to attempt the recovery of his kingdom, and assured him, that he might rely with confidence on his friendship and cooperation in all things that might forward the attainment of his wishes. But, as he was then occupied in the prosecution of a war in France, and unable to give him any personal assistance, he gave him letters of recommendation to some of his barons in England, authorizing him to enlist all such amongst the English as were willing to enter into his service, and carry them with him to Ireland.

Furnished with these recommendations, and this important authority, he passed into England, where he entered into negotiations with Richard Earl of Pembroke, surnamed Strongbow, for his assistance in the recovery of his dominions, promising to give him his daughter *Aoife*, or Eva, in marriage, and with her his whole inheritance and the right of succession to the kingdom of Leinster, after his decease. The ambitious Earl embraced the proposal with avidity, and pledged himself to lead into Ireland, early in the ensuing spring, a chosen body of troops, that should restore the Leinster prince to the throne of his ancestors. In fulfilment of this engagement, Ireland, in the year 1169, for the first time, found her shores invaded by an Anglo-Norman enemy. Upon their arrival, Dermot, who had previously returned in a private manner to Ireland, collected as many of his adherents as he could muster, and hurried to meet his new allies. A week had elapsed before the arrival of these foreigners, and their having been joined by the Leinster forces, was announced to Roderick O'Connor, King of Conaught, then

generally considered as Monarch of Ireland. Roderick lost no time, but speedily collected his troops ; and, being joined by O'Ruairc, Prince of West Brefny, and by O'Maelseaghlain, King of Meath, with such forces as they could collect on the spur of the occasion, marched to *Fiodh-dorcha* (*Feea-durcha*, *i. e.* the dark wood) near Ferns. Here they met with the allied Leinster and English forces, when a conflict ensued, in which Dermott and his auxiliaries were defeated, with the loss of twenty-nine Lagenian Chiefs and two of the English Knights, together with a great number of lesser note.

The annals of Inisfallen relate, that, after this defeat, Dermot went to the camp of the King of Ireland, and gave him as many hostages as he required for the territory of *Ive-kin-seallagh* ; and to O'Ruairc he gave five score ounces of gold, as an atonement for the insult offered to his wife.\* There was also an obligation imposed on

\* It is generally asserted by Historians that Dermot Mac Morogh courted Dervorgilla, the daughter of O'Melaghlinn, King of Meath, before her marriage with O'Ruairc (or O'Rourke), Prince of Brefny ; that a mutual affection existed between them ; that her father would not consent to their union, but forced the young lady, against her inclination, to take for her husband O'Ruairc, for whom she never had any affection ; that she therefore took advantage of the absence of her husband, who had gone on a pilgrimage, and sent for Dermot to come to carry her off ; that upon this invitation, Dermot with a strong party went into Brefny, where he met Dervorgilla, and carried her away with him ; but, to save the lady's credit, it was made to appear as if he forced her away against her consent. This story, as it is told, does not appear improbable ; but, if a variety of circumstances attending the case be considered, the story will, perhaps, be found very far from the truth. First, Dermot was old enough to be the father of Dervorgilla, and had actually a daughter, who was older than that lady, married to Donald O'Brien, King of Limerick, besides a number of sons, and another daughter, Eva, who was afterwards married to Strongbow. It was not therefore very likely she could have been in love with the tyrant Dermot. Secondly, her husband was so well convinced of her innocence and purity, that, after she was rescued from McMorogh, he took her home and cohabited with her until he was basely murdered in 1172, by the partisans of Hugo de Lacy, who had invited him to a friendly conference. Lastly, she was a remarkably religious woman all through her life :

Dermott, that he should bring no more English adventurers into Ireland, and that he should be submissive to Roderick as to his chief Lord. All this Dermott bound himself by the most solemn oaths to perform. He moreover gave his own son as a hostage for the performance of this engagement. A man of Dermott's description, however, was not to be bound by oaths or promises; and therefore, upon the arrival of a fresh body of English troops, under Maurice Fitzgerald, and others, subsequently, under Raymond Le Gross and Strongbow himself, he joined with these foreigners and gave his daughter in marriage to the Earl.

Shortly after this transaction, early in the year 1170, Dermott and the English were joined by the valiant tribe of the Dalgais,\* under Donald O'Brien, King of Limerick, who was married to one of Dermott's daughters, sister to Eva, the wife of Strongbow. To this act he was instigated as well by the jealousy with which he viewed the growing power of the Conatian King, as by the close family connection between him and the King of Leinster and the prime leader of the English invaders. By this new addition of strength to the Allies, the English were enabled to obtain a permanent footing in Ireland, although of no very great extent; and, by this partial conquest, the English King assumed to himself, and

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and, after her husband's death, had lived in a state of holy widowhood to the year 1193, when she died in the Abbey of Mellifont, to which she was a bountiful benefactress, having bestowed to it 60 ounces of gold, a chalice of the same metal for the high Altar, and holy furniture for nine other Altars in the same Monastery.

\* Descendants of Cas, son of Conall of the swift horses, King of Munster. The Dalgais included the principal families of Thomond, of which, in latter days, the O'Brien's were the chief. They were always noted for bravery and prowess, of which many splendid examples are to be found in the History of Ireland. The chief of the M'Namara's, one of the most respectable families of which this *Dal* or tribe was composed, was the hereditary officer that always inaugurated the chief of the O'Brien family, as Sovereigns of Thomond.

transmitted to his successors, the nominal sovereignty of the whole island. But, although the country was thus nominally brought under the dominion of England, the changes produced by it in the ancient laws of the country could not be very material; for the power of the English, in Ireland, was for some centuries confined within very narrow limits; seldom extending beyond the bounds of what was called the English Pale. This District, although at all times comparatively small, was more or less expanded according as the Irish princes were more or less united or divided amongst themselves. The English colonists, on the one hand, sowing dissensions amongst the natives, taking advantage of their weakness to extend their power and their territories; and, on the other hand, the Irish again forming leagues amongst themselves to repel the strangers and circumscribe their dominions.

By these occasional agreements amongst even two or three of the bordering Irish princes, (for the nation in general never united against the British colonists) the English power was frequently reduced to the lowest ebb; so that nothing could have preserved them from total extirpation but the assistance afforded them by other Irish princes and tribes, whose friendship and protection they purchased by paying them a tribute, or *black rent*, as it was called. That this black rent was continued to be paid by the English government in Ireland to the Irish princes, for a long period, cannot be denied. For the compositions with those princes securing the payment of this Black rent are still extant; and that it continued to be paid so near to our own time as the 28th year of the reign of King Henry VIII, is proved by an act passed in the Irish Parliament of that year, prohibiting the future payment of black rent to the chiefs or princes of the Irish.

The wars between the contending parties was of the most de-

structive nature ; and often the most barbarous and detestable acts of treachery and cold blooded cruelty were committed, which, being continued for so many generations, at length created an unconquerable hatred in the hearts of each against the other. This hatred was wilfully fomented by the unwise policy adopted by the English government in those unhappy times, who made it a constant practice to pursue such measures as must tend to irritate the natives, and to reject such proposals as might be conducive to the bringing about an amicable arrangement.

That several of the Irish princes, wearied by the perpetual warfare carried on between themselves and the English colonists, were desirous of becoming peaceable subjects to the crown of England, and of being governed by the English laws, cannot be denied. Sir John Davis, Attorney General to King James the First, in his "*Discovery of the true cause why Ireland was never entirely subdued, nor brought under obedience to the Crown of England,*"\* has shown, from indubitable authority, that the Irish, "by a petition preferred by them to the King, Anno 2<sup>d</sup> of Edward the Thirde, desired that an act might passe, in Ireland whereby all the Irishrie might be enabled to use and enjoy the laws of England." Sir John further shows, that this was not the only application made by the Irish for the benefit of the English laws, but that applications for that purpose were frequent ; and he gives examples of these in the 23d and 34th years of Henry VIII, when O'Donnell, in the extremity of the North, and the O'Birnes, in the south east of Ireland, desired that they might be admitted to the protection of those laws. This so just request was not complied with, and to this circumstance, Sir John attributes the principal cause of resist-

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\* London edition 1747, printed from the edition in 1612, p. 115.

ance in the Irish princes to the English government, and their close adherence to their own *Brehon* laws. On this subject, he thus delivers his opinion: “ This then I note as a great defect in the  
 “ civill policy of this kingdom, in that for the space of 350 years,  
 “ at least, after the conquest, the English laws were not commu-  
 “ nicated to the Irish, nor the benefit and protection thereof allowed  
 “ unto them, though they earnestly desired and sought the same.  
 “ For as long as they were out of the protection of the lawe, so as  
 “ every Englishman might oppresse, spoyle and kill them without  
 “ controulment, how was it possible they shoulde bee other than  
 “ out-lawes and enemies to the crown of England?”—“ If the  
 “ English magistrates would not rule them by the lawe which doth  
 “ punish treason and murder and theft with death, but leave them  
 “ to be ruled by their own lords and lawes, should they not em-  
 “ brace their own *Brehon* lawe, which punisheth no offence but  
 “ with a fine or ericke?” \*

We have above seen, that, in the reign of Edward the Third, the Irish applied to be admitted to the benefit of the English laws. But so far was this reasonable request from being complied with, that, in the 36th year of the same reign, a law was passed in the parliament, then held at Kilkenny, which made it high treason for one of English blood to intermarry with the Irish, to foster one of their children, or even to stand sponsor for one of them at baptism, To use an Irish name, to speak the Irish language, or to dress in the Irish apparel or fashion, was punishable by imprisonment. In this parliament, “ It was established and commanded, that the  
 “ English, in all their controversies, should be ruled and governed  
 “ by the common lawe of England; and if any did submit himself

\* *Discovery, &c.* London edition, 1747. p. 119.

“ to the *Brehon* lawe, or March lawe, he should be adjudged  
 “ a traytor.”\*—“ Againe it was made penall to the English to per-  
 “ mit the Irish to *creaght* or graze upon their lands, to present  
 “ them to Ecclesiastical benefices, to receive them into any mo-  
 “ nasteries or religious houses, to entertaine any of their minstrels,  
 “ rimers, or news-tellers.”†

The statute against intermarrying with the Irish was again enacted so late as the 28th year of the reign of Henry VIII,  
 “ Whereby it is manifest,” says Sir John Davis, “ that such as had  
 “ the government of Ireland under the crown of England, did in-  
 “ tend to make a perpetuall separation and enmity between the  
 “ English and the Irish, pretending (no doubt) that the English  
 “ should, in the end, root out the Irish ; which the English not be-  
 “ ing able to do, did cause a perpetuall warre between the nations,  
 “ which continued four hundered and odde years, and would have  
 “ lasted to the world’s end, if in the end of Queen Elizabeth’s  
 “ reigne the Irishry had not beene broken and conquered by the  
 “ sword ; and since the beginning of his majesties raigne, had  
 “ not been protected and governed by the lawe.”‡

We have seen before, that the ancient Irish laws were not altered by the invasion of the Danes and Norwegians, and the temporary settlements they obtained in this country, in consequence of that invasion ; and that, excepting some trifling changes that might have taken place by the introduction of the Christian religion, the Irish laws must have been, at the time of the English invasion, in 1169, the same as they were when they were first instituted. We may now conclude, from the brief historical sketch here given of the first establishment of the English in this country, and from the pains

\* Discovery. &c. London 1747, page 212.

† Ibid. p. 213.

‡ Ibid. p. 214.



taken by the English government to prevent the intermixture of the two nations, from the time of their first entrance into the island down to the reign of James the First, that no material change had been made in the Irish laws in consequence of the settlement of the English in Ireland ; but that, whatever those laws were at the end of the reign of Queen Elizabeth, they must have been the same as they were at the time of the invasion in the reign of King Henry II. or as they were handed down from the earliest period of the Irish monarchy, allowing for some small changes arising from an improved state of civilization.

That the Irish princes, from the time of the English invasion to the commencement of the 17th century, held their respective territories, and governed their tribes according to those ancient laws established by their ancestors at a very early period, and which the English had not the power to abolish, Sir John Davis puts beyond the possibility of a doubt : he says,\* “ For to give lawes unto a people, to institute magistrates and officers over them, to punish and pardon malefactours, to have the sole authority of making warre and peace, and the like, are the true marks of soveraigntie, which King Henry the Second had not in the Irish countreyes, but the Irish lords did still retain all those prerogatives to themselves.”

“ For they governed their people by the *Brehon* law, they made their owne magistrates and officers, they pardoned and punished all malefactours within their several countries, they made warre and peace one with another, without controulment ; and this they did not onely during the raigne of King Henry the Second, but afterwards in *all times*, even until the raigne of Queen Elizabeth.”

\* Discovery, &c. London 1747, p. 18.

#### IV. *Of the names by which the Irish laws are called.*

The ancient Irish laws are called, in the language of the country, by four different names, in the explanation of some of which some mistakes, it is submitted, have been made by modern authors. The names are as follow, viz.

I. SEANCHAS, *i. e.* SEANCHUIS, which the commentators on the laws explain by “ *gach cús shean acas gach cúis bheannas do na Seanaibh,*” “ every ancient law, and every law relating to the “ ancients.”

II. FENECHAS, or FEINECHUIS, which the commentators derive from “ *Fene*” or “ *Fine-chaoi-fhios*” *i. e.* *slighidh feasa Fine na hErenn, acas feasa a cuisi fos;*” “ the way of knowledge of the “ people of Ireland, and also of their laws.” “ *Oir is ainm do Erennchaibh FENE o Fhenuis farsaidh*” “ For Fine is a name of “ the Irish from (their ancestor) Fenius farsaidh.” The commentator further says, that some considered this word merely a variation in the spelling of the word *Seanchas* or *Seanachas*, by a *Ceannfhochras* or change of initials, common in ancient Irish language.\*

III. DLIGHIDH BREITHEAMHUIN, *i. e.* *Judges Laws*; commonly called Brehoon, or Brehon Laws.

IV. DLIGHIDH NEIMHIDH, *i. e.* *Laws of the degrees or ranks.* This title has been by O’Flaherty, in his “ *Ogygia*,” and by Doctor John Lynch, R. C. Archdeacon of Tuam, under the signature of *Gratianus Lucius*, in his “ *Cambrensis Eversus*,” translated into Latin by “ *Judicia Cœlestia*,” and from them the late Charles

\* The Irish Scholar, who has not the means of consulting the original laws, will find the comment here referred to, which contains many curious particulars, under the word SEANCHUIS, in O’Reilly’s Irish English Dictionary.

O'Connor of Balanagar, in his valuable "Dissertations on the History of Ireland," and most others who have mentioned those laws in their writings, call them "*Celestial Judgments*." General Vallancey, in the first volume of his "*Collectanea de Rebus Hibernicis*," says *Breith neimead*, literally means "*the sentence of the law*," and he gives some fanciful derivations of the word *Neimead*, which never entered into the brain of the man who first used the term. But, notwithstanding the great reputation of all those learned Antiquaries, the author of these pages submits, that they have all mistaken the meaning of the word *Neimead*. In making this assertion he is supported by the authority of the laws themselves, and of other ancient documents. Amongst the Sea-bright collection of MSS. now in the Library of Trinity College Dublin,\* there is a passage in which the following is to be found: "*Cia Neimheadh is uaisle fil i talmain? Neimedh necla*" (*necla* for *neclasa*). Which are the superior degrees or ranks in the world? The degrees of the church. "*Cia Neimead is uaisle fil a neacl?*" "Which is the superior degree in the church? *Neimead nEasp*." "The degree of bishop." Again, in the same Library,† we find, in the laws respecting Bees, a Flaith or Prince, designated by the title of *Uasal Neimheadh*,—"Beich tethechta gaibhte a crann Uasail *Neimheadh*," "Fugitive Bees found in the tree of an Uasal *Neimheadh*." This title the commentator explains by a *Flaith* or Prince. Again, in the *Seanchas bheg*‡ a very ancient code of laws, defining the rights and privileges of various ranks in society,

\* Class H. No. 54, page 17.

† Class H. No. 34.

‡ An imperfect and very much defaced fragment of this Tract, is in the Library of Trinity College, Class H. 36. Another imperfect copy in class H. 54. A perfect copy in the Book of Ballimote in the Library of the R. I. Academy; and another very ancient copy in the collection of the author of these pages.

We find a distinction made between the *Saer neimead* and the *Daer neimead*. By the first is meant a *So-fhir neimead*, i. e. a Neimead in good or easy circumstances, a freeman; by the latter is meant, according to the commentator, a “*Do-fhir Neimead l* (*l.* a contraction for *no*) *Neimead duire l* (*. no*) *dereoile*.” A Neimead in distress or poverty, who is obliged to labour for the service of another. Upon these authorities, the author of this Essay has no hesitation in asserting, that O’Flaherty, Lynch, O’Conor, and Vallancey, and all others who have followed them in calling the “*DLIGHIDH NEIMHEADH*,” “*Judicia Cœlestia*,” “*celestial judgments*,” or “*the sentence of the law*,” have completely mistaken the meaning of the words, which should be rendered into English, “*laws of the degrees or ranks*.”

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#### V. Of the office of Brehon or Judge.

From the commencement of the Irish Monarchy, down to the beginning of the seventeenth century after our Lord’s incarnation, the Irish laws were administered by officers called, in the language of the country, *Breitheamhuin* (Brehooïn), in English, *Judges*, appointed for that purpose by their Monarchs, provincial Kings, and Chiefs of districts, each for his own people respectively. This office, like that of the professors of all other branches of Science or Arts, was hereditary in particular families. The M’Firrisses of Leacan were the hereditary Judges of the Tribe of the Mac Donoghs of *Tir Oliolla*, and some other septs in the North of Conaght; the Mac Clanchys filled the judicial chair of Thomond (*Tuath Mumhan*, *Thooa-Moowan*), or North Munster; the

O'Breisleans were hereditary Judges to the Maguires, and other septs inhabiting Fermanagh, and a part of *Oirgiall* or Oriell; and the Mac Egans \* held a similar office under some of the Dalgaiss,† the O'Kenedys of Ormond (*Oir Mumhan*, Oir Moowan) or East Munster, the O'Reillys, Princes of East Brefney, and many other distinguished families.

Whenever the Judge sat in execution of his office, he was constantly attended by a *Filé* or Bard, who was well skilled in the *Dlighe Filidheachta* (*Dlee-he Fillee-aghta*) or Poetic Law, *i. e.* that part of the law, the rules of which were preserved in poetry or verse. The duty of the *File* was, if called upon for that purpose, to assist the memory of the *Breitheamh* (*Breih-av*) or judge, by a repetition of portions of the laws, bearing on the question then under consideration, and to supply examples of the proceedings and decisions of former celebrated judges in similar cases. To qualify the *Filé* for this important office, the rules for the education of the poetic professors required that every *Dos*, or poet of the third degree, before he was qualified to become a *Cana*, or poet of the fourth degree, should repeat, in the presence of the king and the nobles, the *Breithe Neimhidh*, *i. e.* the law of the degrees or ranks, and fifty poems of his own composition.

Doctor Nicholson, in his "Irish Historical Library," says, "Those grave sages of the law who compiled ours" (the Irish law) "were a distinct tribe or family (as the historians, physicians, poets, and harpers) to which was allotted a sufficient farm in inherit-

\* To this last mentioned race of Brehons we are indebted for the major part of the copies of Ancient Irish Laws that are now extant. There is scarcely one Law-tract in the Library of Trinity College that the name of M'Egan does not appear in, either as the commentator, transcriber, or proprietor.

† See Note, page, 159.

“ance; and, in criminal cases, the Brehon had an eleventh part of all the fines.” Other authors have also asserted, that the Judge received the eleventh part of all fines imposed by his decisions. But upon the most diligent search, which the author of this Essay could make, through the ancient laws of his country, he has not been able to discover any thing that justifies the assertion. On the contrary, he has reason to think, that the Judge did not receive any part of the fines imposed, as every care was taken to make him an independant and disinterested agent. In the *Seanchas bheg*, which particularly provides for the entertainment and rewards, and defines the rights and privileges of various ranks in the state, no mention is made of fines to be paid to the *Brehons* or judges, although in that treatise we find established the following provision for the support of those officers:—“*Brethemh Berla Fene acas Fíledheachta X. Seoit ina dire acas turtugad cuigti acas trica bairgin do.*” “The Breihev (Judge) of the *Bearla Fene* (*i. e.* of the common law, and of the poetic law, his *dire* (dues) are ten *Seoids* (Cows) and full entertainment of meat, &c. for five days, and thirty cakes daily.”—“*Breithem tri mberla comdire do fri hoire tuisi.*” The Breihev (Judge) of three\* *Bearla* (laws) his *dire* (dues) are equal to those of an “Aire † Tuisi.”

To secure the impartial administration of justice, the law declares, that the rank of Brehon should not be given to any, who had not

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\* “Three *Bearla*.” The commentator explains this by “*Fenechas, Fílidheacht acas Leighinn.*” The common law, the poetic law, and the written law.

† By the Treatise here quoted, it appears that the *Aire Tuisi* was the lowest but two in the degrees of Princes or *Flaiths* called *Airechs*, the *Aire echda* and *Aire desa* only being inferior to him. His *Diré* was fifteen *séds* (cows); his full entertainment of meat, &c. was for ten days, and forty cakes daily. The commentator describes the quality of the cakes which each person was to receive.

*Tellach* (a household, possessions, &c.), and who paid not the legal retribution to the *Brughaidh* \* (*Broo-ee*), and also for the trespasses of his cattle, or for the waste and offences committed by his people. If a Judge were convicted of partiality, or having wilfully pronounced an unjust decision, he was stigmatized with a welt or mark branded on his cheeks, as may be inferred from the following extract from the ancient Glossary of Cormac Mac Cuillionan, under the word FERB. “*Ferb dan. i. bolg do cuirther for gruadh-aibh in duine iar nair, no iar ngubreith.*” Ferb, moreover, is a blister (welt or seam) inflicted on the cheeks of a man after contemptuous abuse, or after a *false decision*. Again, in a Law-tract in the College Library, which the late General Vallancy mistranslated and published, † we find the following; “*Bearthaidh Sencha cetbrethach bantellach ar fertellach comdar Ferba fulachta for a ghruaidhe iar cillbreathach.*” “Sencha gave the first decision, that female property was equal to male property; so that he suffered a brand on his cheek, after his unjust judgment.”

That the Brehons had lands assigned to them for their support is attested by Camden, in whose days they were in full employment in Ireland. “The Irish,” says he, “have their Judges, and they always have successors, to each of whom a farm is assigned” ‡

\* The *Brughaidh* (*Broo-ee*) was a public officer to whom lands were assigned, for the purpose of keeping an open house of entertainment for the reception of strangers, and supplying the poor with food, &c. The house of the *Brughaidh* was the place of general assembly for the heads of the Tribe, and here they generally elected or confirmed the elections of their chief.—*Brughaidh* was also the title of a public farmer.

† Collect. de Reb. Hib. Vol. 3. p. 84.

‡ Britan. Amstel. edit. p. 686.



# VI. *Account of ancient Brehons and Lawgivers.*

The ancient Irish manuscripts preserve to us the names of several noted Lawgivers and Judges, besides those given by O'Flaherty in "Ogygia," who is followed by O'Connor in his "Dissertations on the History of Ireland." Some of those were co-eval with the settlement of the Celto-Iberian colony in Ireland, others lived between that period and the introduction of Christianity, and others subsequent to that event. Some of the laws of those persons are still extant; but it is to be lamented, that the greater portion is irrecoverably lost. This is not much to be wondered at, when we recollect, that it was the barbarous practice of the Danes to plunder and burn the Colleges and other seminaries for the education of youth, and to destroy the books wherever their power extended. A policy in which, to the eternal disgrace of the English government in Ireland, they were too closely imitated by the English colonists in this country, down to the reign of King James the First, and perhaps even later.

Upon the landing of the Milesian colony in Ireland, we find them accompanied by Amergin, brother to Heber and Heremon, the first Ibero-Celtic Monarchs. Amergin was the Brehon of the colony, and was also a poet and a philosopher. Four poems, the productions of this author, are mentioned in the Transactions of the Ibero-Celtic Society as being still extant.

Eochaidh Eadgadhach (Eohy Eadgahagh) the 27th Monarch of Ireland, we find by the Leabhar Gabhala (Leaver Gavaula), first established the law, by which the different ranks in society were to be distinguished by the number of colours in their respective garments. This Monarch, according to O'Flaherty's chronological calculation, commenced his reign, A. M. 3041.



Ollamh Fodhla (Ollav folla) the 40th Monarch of Ireland, ascended the throne A. M. 3236. He established the celebrated *Fes*, or assembly of the States, at Tara, for several purposes beneficial to the nation. He is generally considered as the great Lawgiver of the Irish, although none of those laws supposed to be made by him in particular have descended to our times. But though he might have promulgated some salutary laws, he was, most certainly, not the first lawgiver of the Irish ; as is evident from the quotation from the *Leabhar Gabhala*, given above, page 145, which shows that one of the principal causes, that induced the people to elect him their Sovereign was, “ *that he might preserve the laws and regulations already established.*”

Ugaine Mór, or Hugony the Great, became the 78th Monarch of Ireland A. M. 3619. He divided the island into twenty-five parts, or shares, over each of which he placed one of his sons as superintendant, and ordained laws for their government. One of these sons, Roigné Rosgadhach, or Royney the poetic, is said to have been the author of some of those laws called *Dlighe Neimhidh* (*Dlee-he Nevee*), or laws of the degrees ; but we are not now able to state which of those laws, bearing that name, were of his composition.

About A. M. 3900, flourished Eochaidh (Eohy) son of Luchtna King of Munster, who promulgated some laws highly praised for their strict justice. Where any part of those laws are now to be found the writer of this Essay has not been able to discover.

About this time, also, lived the noted Brehon, Eogan, son of Dathacht (Darhaght). He is said to have composed laws ; but these, like most others of the same and even of subsequent periods, it is much to be feared, are no longer in existence.

Eochaidh Feidhleoch (Eohy Feylogh,) 104th Monarch of Ire-

land, ascended the throne A. M. 3922. He made some alterations in the laws, and restored the pentarchical government which Hugony the Great had abolished. In his time flourished Sean, son of Agaidh (Agay) the reputed author of a code of laws called "FONN SEANCHAS MOR." Three copies of a tract, bearing that name, are to be found in the MSS. in the Library of Trinity College. H. No. 35, page 11. H. 54, page 10, and H. 54, page 358. By a memorandum prefixed to the first of these copies, it is said to have been compiled by Sean, the son of Agaid, in the time that Fergus, son of Leid was King of Ulster, twenty-six years before our Lord's Incarnation. By some introductory matter prefixed to the second copy, it is said to have been compiled in the time of Laoghaire, son of Niall, the first Christian Monarch of Ireland, who commenced his reign A. D. 429. The persons who were concerned in this compilation were the famous committee of nine, mentioned above at page 153, who were specially appointed for that purpose. The third copy seems to be nearly the same as the second, and both differ from the first, at least in the arrangement of the laws, though in some respects the laws agree in substance. Perhaps the first tract may be the same as that composed by Sean, and the others, copies of that work as revised and altered by the committee. Each of these copies appears to be more or less imperfect; but still they contain laws on a great variety of subjects, well deserving of publication, as affording matter illustrative of the manners and customs, not only of the ancient Irish, but also of other Celtic tribes, and interesting in a peculiar manner to the British nation.

About the time of our Saviour's nativity, whilst Conor, son of Nessa, the Mæcenas of Ireland, ruled the province of Ulster, flourished the poets Adhna (Ahna) Athairne (Ahairne) of Binn-

Edair, Forcheirn, or Ferceirtne, son of Deaghaidh (Deaghy) and Neide, Son of Adhna, all of whom, it is said, composed *Dlighidh Neimhidh*, some fragments of which are said to be still in existence. What was the nature of the laws, said to have been communicated by those poets, we are not told ; but it is most probable, that they were for the regulation of the Bardic tribe, who at that time generally executed the office of Brehon, and who had rendered themselves so odious to the people by their insolence, their oppressions, and arbitrary decisions, regardless of justice and contrary to the established laws of the land, that they were expelled from the provinces of Leinster and Munster. In this exiled and wretched condition, they sought protection from the Ulster King, who, though guilty of numerous faults, was a powerful prince, and the constant and bountiful patron of genius and learning. Conor received them into his protection ; but knowing, that a reformation in their order was absolutely necessary, as well on their own account, as to satisfy the people of the other provinces, he determined upon reducing their assumed power, and subjecting them to proper restrictions. This he performed by the aid of some of the Bards themselves, amongst whom the persons above mentioned were the most celebrated ; and, by these means, he brought about the reestablishment of the order in the other provinces under the necessary limitations. From these circumstances we may be allowed to conclude, that the laws, said to be composed by these persons, were for the regulation of ranks in society, of which the poets were one of great importance. If this conclusion be correct, the title of *Dlighidh Neimhidh*, or laws of degrees given to their compositions was appropriate, and it is not improbable that they are now em-

bodied in the *Seanchas*\* *bheg* ; which, though certainly composed in times subsequent to the establishment of the Christian religion in Ireland, carries internal marks of very high antiquity.

In the latter end of the first Christian century, lived the celebrated Moran, chief Judge to the Monarch Fearadhach Fionnfachtnach (Farayagh Finnfaghtnagh), *i. e.* the fair and just. Moran, under the auspices of his “fair and just” Monarch, is said to have formed some laws for the better government of the people. What these laws were, the writer of this Essay cannot say ; but, if they were framed on the principles recommended to his master in his *Udhacht* † (*Oo-aght*) or testamentary precepts, they must be truly just ; and truly happy must that people have been, who had a Fearadhach to govern them, and a Moran to administer justice.

In the time that Conn *of the hundred battles* reigned over Ireland (A. D. 177,) lived Modan, son of Tulban, who wrote a law-treatise called *Meill bhreatha*. A copy of this tract was in the possession of the celebrated Duaid Mac Firbis, the last of the Antiquaries of Leacan, who was murdered at Dunflin, in the county of Sligo, A. D. 1670.

About the year 200, lived Fachtna, son of Seancha, whose laws are quoted in the *Sanasan*, or Glossary of Cormac Mac Cuillionan, King of Munster, and Archbishop of Cashel ; and, about the same period, lived Conla, Judge of Conaght, Kinnith O’Conmid, and some others, of whom the writer of these pages acknowledges that he knows little more than the name.

In the year 254 of the Christian æra, Cormac Mac Art, or, as he is by others called Cormac O’Cuinn, ascended the throne of Ireland. Besides several other tracts, he wrote a Treatise on

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\* See Note page 166.

† In Library of Trin. Col. Dublin, H. No. 35.

Crimes, &c. a copy of which is to be found in the Library of Trinity College. \* At this time also lived Cairbre, the son of Cormac, Fionn † Mac Cubhail (Finn mac Coö-al) and Fithil, chief Judge of Ireland. All these are said to have delivered laws; but they are at present, perhaps, not extant, with the exception of those of Fithil, some fragments of which are now in the Library of our University.

Contemporary with Cormac Mac Art lived also Fiatach (Fee-a-tagh) a lawgiver, who wrote a law-tract, called Fiondsuith, a copy of which was in the possession of Duald Mac Firbis of Leacan. ‡

We have seen above, p. p. 153 and 173, that in the reign of Laoghair (Lay-a-rey) Monarch of Ireland A. D. 429, the ancient laws, records, &c. of the nation, underwent a thorough revisal by a committee of nine persons, appointed for that purpose. One of these was St. Beinin or Benignus, who for ten years filled the Archiepiscopal chair of Armagh, and died the 9th of November, 468. This eminent man, beside the share he had in the revisal of the *Seanchas mor*, is said to have been the author of the *Leabhar na ceeart* (Leavar na garth) or “*Book of Rights*, § setting forth the rights, privileges, and revenues of the monarchs of Ireland, and those of the provincial kings. Copies of this book are in the Library of Trinity College, in that of the Royal Irish Academy, and in private collections; but the language is apparently more modern than that used in the days of St. Beinin. But, be that as it may, the revenues of the Monarchs, provincial Kings, and petty Princes,

\* Class H. No. 54.

† The Fingal of M'Pherson's Ossian.

‡ Cambrensis Eversus, cap. 20. p. 157 et. seq.

§ For an account of this work, see Transactions of the Ibero-Celtic Society, page 28.

were paid according to the mode and quantities prescribed by that document.

In the time that Guaire (Gwoo-ary) the generous, ruled the Province of Conaght (A. D. 647) lived Seanchan Torpest, who is said to have composed some laws; but, though some copies of poems written by him are to be found in the book of Glendalough, in the Library of Trinity College, \* and in the book of Leacan, in the Library of the Royal Irish Academy, copies of his laws are yet to be discovered.

In the year 678, died Cinnfaeladh (Kinfayaladh) the learned. Besides the Uraicept and several poems, of which he was the author, he revised the Treatise on Crimes, &c. written by the Monarch, Cormac, and subjoined some additional matter of his own. This appears from the MSS. in the Library of Trinity College, † where it is stated, that the parts written by Cormac are those beginning “*A meic ara fesar*” and the “*Blai*,” and that the subsequent parts were written by Cinnfaeladh. The article in which this tract is contained has been misplaced by the binder in making up the book. The beginning of the tract is at page 409, of class H. 54, and continues to the end of page 412, where it breaks off apparently imperfect; but the continuation is to be found at page 399, and so forward to page 408, where it ends imperfectly, not having Cinnfaeladh’s additions. Another copy of this tract is in the MS. collection of the writer of this Essay; but he has to regret that his copy, though fuller than the College copy, is also imperfect. General Vallancey, in the latter end of the first volume of the *Collectanea de Rebus Hibernicis*, has given some account of this tract; but he has fallen into some gross blunders, which Doctor ‡ Camp-

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\* Class H. No. 32.

† H. 54.

‡ *Strictures on the Ecclesiastical and Literary History of Ireland*, p. 46.

bell taking advantage of, has used as a medium to turn the whole into ridicule.

During the time that Finghin (Fineen) son of *Cu cen-mathair*, was king of Munster (A. D. 996), flourished a lawgiver named Amergin, son of Amalgaid, author of a law-tract on the privileges and punishments of various persons. This tract is to be found in the College Library, H. No. 54.

In the time of Cathal, son of the above-named Finghin, King of Munster, who died A. D. 742, flourished the three O'Burechans, brothers, named Farann, Baethgal and Maeltuile, one a Bishop, one a Judge, and the other a Bard. They were joint authors of some laws, which are, probably, intermixed with other manuscripts in the Library of our University.

Contemporary with these brothers was Cearmnadh (Kearmna) the poet, author of a law-tract, to be found in the Library of Trinity College, class H. No. 54, page 469.

This is the last Irish lawgiver we find mentioned before the Danish invasion, and with him we may close this catalogue.

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VII. *Account of ancient Law-tracts that were in the possession of the celebrated Duald M'Firbis.*

So late as the latter end of the 17th century, there was in existence a number of ancient law-tracts, which, it is much to be feared, are not now to be found. At that period Duald M'Firbis, the last of the hereditary Antiquaries of Leacan, already mentioned, had in his possession a collection of ancient Irish laws, a catalogue of which he transmitted to the erudite author of *Cambrensis Eversus*.\*

\* *Cambrensis Eversus*. Cap. 20. p. 157. et seq.

This catalogue, the late learned Charles O'Connor of Belanagar, published in his valuable "Dissertations on the History of Ireland." The first collection, we are told, was entitled *Breithe Neimhe*, compiled from the works of ancient *Fileas*, by the three sons of Burechan; but we are not informed what was the nature of their contents. Another collection contained the following tracts:

I. *Meill-bhreatha* (*Mell vreaaha*) *i. e.* a collection or mass of judgments, written by Modan, son of Tulban.

II. *Fiond suith* (*fionn see*), *i. e.* the establishment of truth, written by Fiatach, in the time of the Monarch Cormac, son of Art.

III. *An teacht Bhreath*, *i. e.* the legal decisions, a miscellany of laws.

IV. *An Fuigheal Bhreatha* (*an foo-ee-yal vreaaha*), *i. e.* the verbal decisions. To this is subjoined a tract intitled *Fotha mor*, *i. e.* the great foundation, setting forth the office of a Judge, and the faults which subject him to be deprived of his office.

V. *Fotha bheag* (*Foha veg*) *i. e.* the small foundation. On the laws of partition.

VI. *Aid bhreatha* (*aid vreaaha*) *i. e.* judgments on theft or larceny. This would be more properly written *Taid Bhreatha*.

VII. *Coras fine*, *i. e.* the regulations of a tribe. Mr. O'Connor, calls this "a book, prescribing rules for the tanist districts." Not having the book here mentioned, the writer of these pages cannot speak of its contents; but he knows, that, in the Library of Trinity College, \* is to be found a law-tract, bearing the same title, which treats of agreements between the different members of a tribe, and of the disposal and gavelling of land and other property.

\* Class H. No. 54. p. 214.



VIII. The book of *Cain* (Cauin) or *Mulcts*, divided into four parts. The first relates to mulcts of all kinds ; the second to murders and several other crimes, with the punishments annexed ; the third to securities, pawns and forfeits ; the fourth, witnesses and testimonies. This work was perfected at Cashel, under the patronage of Felim, son of Crimhthan (Criv-an) King of Munster. To this work is added, by way of Appendix, *Eidgheadh*, a book treating of crimes against the laws, written by Cormac, son of Art, and his son Cairbre Liffeachar, both Monarchs of Ireland.

IX. A work intituled *Dula*, consisting of three parts, of which Mr. O'Connor gives the following account :—" The first treats of  
 " political subjection, and the measures of obedience to our kings ;  
 " of wardships, patronages and privileged places ; of the punish-  
 " ments of offenders in the case of blood ; and of the forms wherein  
 " pacts, contracts, and treaties should be reduced to writing. The  
 " Monarch Cormac assisted in digesting this work."—" The second  
 " part is a miscellaneous treatise relating partly to ecclesiastical mat-  
 " ters. It was compiled by *Comin foda*, but the time uncertain.\* Ano-

\* St. Comin foda, or Cumin fada, and the period in which he lived, are facts as well known as any in Irish history. He was the son of Fiachna, King of West Munster, was born in 592, and died, according to the annals of Tighernach, in 662. In the *Felre Aenguis*, or Festivals of the Church, written by Aengus Ceile De, in the latter end of the 8th century, a copy of which is in the *Leabhar breac* in the Library of the Royal Irish Academy, we are told, that, while other holy men received one gift or another from the Almighty, Cumin-fada received that of science and wisdom. He took a very active part in the controversy respecting the time for observing the Paschal Festival, in which he was one of the chief supporters of the Roman mode of computation, and greatly promoted its adoption in the southern parts of Ireland. It is worthy of remark, that, in his Paschal Epistle to Segienus, Abbot of Hy, he refers to the Cycle, which he says " St. Patrick our Pope brought with him," " Primum illum, quem Sanctus Particius Papa noster tulit." And, although Doctor Ledwich must have been well acquainted with this fact, yet in page 62, of the 2d edition of his *Antiquities*, he mentions the silence of Cummin respecting St. Patrick, as a proof that Patrick was an

“ ther tract relates to rights and regulations, by sea and land, and  
 “ was drawn up by Cormac and Cairbry Liffecar. The last pre-  
 “ scribes what honors are to be paid to kings, ecclesiastics, fileas, &c.  
 “ It is said to be taken mostly from Royney Rosgadhach, son of  
 “ Hugony the Great.”

Perhaps the tract here mentioned might have been the *Dul-Rosgadhach* so frequently quoted in Cormac's Glossary.

X. *Cain Fuithribhe* is the title of another code, which treats of the laws of prescription and long possession. It was written in the 8th century, under the inspection of Cathal Mac Finghinne, King of Munster.

XI. *Fonn Sheanchais mhoir*. Mr. O'Connor says, “ it is mentioned in the annals of the four Masters, and the loss of it is irreparable.” We have seen above, page 34, that this code is to be found in different MSS. in the Library of Trinity College.

XII. *Cain Drubhartaigh Bearra*, treated chiefly of maritime and commercial affairs, and was composed about the same time with the *Seanchas mhor*.

XIII. *Cain Lanamhna mhoir* and *Cain Lanamhna bheg*. “ This” says Mr. O'Connor, “ shewed the several relations of society.” This may be doubted. A section of a law-tract of the same name is to be found in the Library \* of the University, which, agreeable to its title, treats of marriage, adultery, fornication, &c.

XIV. *Faidh Feneachais*, a miscellany of all laws. There is

ideal person. His epistle to Segienus was published by Archbishop Usher in 1632, in his Sylloge. Ep. Hibern. In the *Liber hymni*, amongst the MSS. in the Library of Trinity College, is a hymn written by Cumin fada, beginning “ Celebra Justa Festa Christi Gaudia,” and he is also supposed to be the author of the Treatise “ *De pœnitentiarum mensura*,” an abridgment of the ancient penitential canons, published in the Bibliotheca Patrum. Tom. 12. Lyons 1677,

\* Class H No. 34.

probably an error in this title. It is most likely, that it should be written *Taidh Fenechas*, *i. e.* the ancient law on theft or larceny.

XV. *Cain Borachta*, a tract relating to property in herbage, herds, flocks, &c.

Of the works of the authors mentioned in the former section, it is to be feared, that the greater part is now irrecoverably lost. This, notwithstanding the great care at all times taken by the Irish of their ancient laws and records, will not be much wondered at, when it is considered, that the Danes and Norwegians, wherever their power extended, proved themselves the determined enemies of literature, by plundering the schools and colleges, burning and destroying the books, and murdering the professors and students. A barbarous policy, in which they were too closely followed by the English, from their first invasion of Ireland down to at least the reign of James the First, if not to the time of Cromwell. Add to this, that, when the clergy and monks (in whose libraries copies of those important national documents were always religiously preserved) were obliged to fly from the land of their forefathers, to escape from the persecutions waged against them by the ruling powers, they carried with them to the continent, where they found an asylum, as much of their property, including their books, as they could secure from the gripe of rapacity. Even the law-tracts mentioned in the foregoing catalogue, which, not much above 150 years ago, were in the hands of Duald M'Firbis, are no longer forthcoming. It is true Mr. O'Connor, in his preface to "*Ogygia vindicated*," page 9, speaking of Mr. M'Firbis, says, "His historical, typographical, and genealogical collections (written by his own hand) are now in the possession of a worthy nobleman, the Earl of Roden, who added this to the other collections of Irish manuscripts made by his Father, our late Lord Chancellor Jocelyn." Amongst these, his

law-tracts, although not mentioned by Mr. O'Connor, may, perhaps, be preserved. But, if they be, still are they not a locked-up treasure, and the same as lost to the public? If they be still preserved in the library of the present Earl, his Lordship has the power of rendering an essential service to the native antiquary, and to the lovers of ancient Celtic literature in general, by depositing them in the Library of St. Sepulchre, or some other public library, where the Irish scholar may have unrestrained permission to read them, and, if he should be so inclined, an opportunity of communicating to the public a knowledge of their contents.

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VIII. *Of ERIC, and other modes of punishment prescribed by the Irish laws ; of the nature of those laws, and of their influence on the habits and morals of the people.*

It has been a practice of long continuance with writers of a certain description, from the lying Giraldus Cambrensis down to the little less fabulous Doctor Ledwich, to decry the ancient Irish laws ; and to complain, that the adoption of them by the English colonists caused the most deplorable degeneracy, and that they were of so malignant a nature as to entirely brutalize the Irish character, and to encourage the perpetuation of crimes the most horrible and appalling. It is however worthy of remark, that the persons most forward in the condemnation of those laws are generally those who, from their total ignorance of the Irish language, (in the *Fenian* dialect, of which those laws are written) are utterly disqualified from delivering any correct opinion on the subject. Gerald Barry, a Welshman, better known by the name of *Giraldus Cambrensis*,

was the first who described the Irish as a lawless race. For a complete exposure of the falsehoods, misrepresentations, and malice of this notoriously fabulous writer, the reader is referred to the Cambrensis Eversus of the learned Doctor \* John Lynch, Roman Catholic Archdeacon of Tuam. In that valuable work, the author has shewn, that the slanders of Cambrensis were wilful falsehoods, invented by him, who had the means of knowing the truth, having had the perusal of a great number of the old Irish annals, which he maliciously destroyed.

Edmund Spenser, who, in 1596, published "A View of the State of Ireland," says the Brehon Law "is a rule of right unwritten, but delivered by tradition from one to another, in which oftentimes there appeareth great share of equity, in determining the right between party and party, but in many things repugnant quite both to God's law and man's: as, for example, in the case of murder, the Brehon, that is, their Judge, will compound between the murderer and the friends of the party murdered, which prosecute the action, that the malefactor shall give unto them, or to the childe, or wife of him that is slaine, a recompense, which they call an Eriach; by which vilde law of theirs, many murders amongst them are made up and smothered. And this judge being, as he is called, the Lord's Brehon, adjudgeth for the most part a better share unto his Lord, that is the Lord of the soyle, or head of the sept, and also unto himselfe for his judgement, a greater portion, then unto the plaintiffes or parties grieved." Had

\* Doctor Nicholson, Bishop of Derry, calls this gentleman "the judicious Mr. John Lynch," and gives him the following character: "The collector was a person of that accuracy of skill, (and niceness of taste) in the histories of Ireland, that the reader may rest assured, that his calculations are exact; and that no matters of any great moment have escaped his notice." Irish Hist. Lib. App. p. 244.

Spencer, who lived at a time when the Brehon law was in full force in every part of Ireland, except those included within the compass of the English pale, made the proper enquiries to inform himself upon the subject of ancient Irish law, he would have found that it was not "a rule of right unwritten," but a law written many centuries before statute law was known in his native country ; and, if his reading had been more extensive, he would have known, that the practice he condemns as barbarous in the Irish had been the practice of many ancient nations, and sanctioned by the laws of his own country. "For," says Blackstone,\* "we find in our Saxon laws, particularly those of Athelstan, the several *Weregilds*, or compensations for homicide, established in progressive order from the peasant up to that of the King himself. This was a custom derived to us, in common with other northern countries, from our ancestors the ancient Germans." But Spencer was a poet, and as people of that description are more fond of dealing in fiction than in fact, he denied the existence of the Irish written law ; and, as it was the fashion of the day to decry and debase the Irish character, he selected as a fair sample of the entire code of Irish laws, the mode of punishing the crime of murder, which he conceived would be considered by his readers as barbarous and unjust. He acknowledges indeed, that, in the legal proceedings of the Irish, "oftentimes there appeareth great shew of equity ;" but he mistakes a fact, blending truth with falshood. It is true the Irish law did generally impose an *Eric*, or fine, as a punishment for the crime of murder ; but there were cases, in which that crime was punished with death, and in all cases the murderer was subject to many grievous

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\* Commentaries, Book 4, page 23.

pains and penalties beside the payment of an *Eric*. If the murderer fled, or was not given up to justice, or had not the means of paying his *Eric*, it was to be levied from the tribe to which he belonged. For it was the policy of the Irish law, that the whole tribe should be accountable for the crimes of each of its individual members ; thereby rendering every man an interested conservator of the public peace. The law provided for the distribution of the fine, when paid, amongst certain persons of the tribe to which the deceased belonged ; of which the wife or child of the deceased received the greater part, and the *ceann fine*, or head of the tribe, also received a considerable proportion. This was but reasonable ; because the chief had lost the services of the deceased, and was obliged to provide for the necessities of all the members of his tribe, in which were included the wife and children of the person murdered. That the judge was not allowed to allot to himself “ a greater portion of the fine than unto “ the plaintiffes’ or parties grieved,” nor indeed any portion at all, may be concluded from the silence on this subject of the code of laws called *Seanchus bheg* ; where, as we have seen above at page 169, the rights, privileges and rewards of the Brehons were particularly defined.

But, supposing the Irish custom of punishing culprits by the imposition of a pecuniary mulct were as barbarous as Spencer and others would wish to make it appear, it was surely not more barbarous amongst the Irish than it was amongst several other nations ; and, amongst the rest, Spencer’s own countrymen, who punished the crime of murder by a fine on the murderer.

That the ancient Greeks satisfied by a fine for the crime of murder appears from more than one passage in Homer.

————— “ If a brother bleed,  
 “ On just atonement we remit the deed ;  
 “ A sire the slaughter of his son forgives,  
 “ The *price* of blood discharged, the murd’rer lives.”\*

Again, describing the shield of Achilles, he says,

“ There in the forum swarm a numerous train,  
 “ The subject of debate, a townsman slain ;  
 “ One pleads the *fine* discharged, which one denied,  
 “ And bade the public and the laws decide.”†

We are informed by Tacitus, that, amongst the Germans, “ he  
 “ who is convicted of transgressions pays a mulct of horses, or of  
 “ cattle. Part of that fine goes to the king, or the community, and  
 “ part to the person injured, or to his family. Atonement is made  
 “ for homicide by a certain number of cattle, and by that satisfac-  
 “ tion, the whole family is appeased : a happy regulation, than  
 “ which nothing can be more conducive to the public interest, since  
 “ it serves to curb that spirit of revenge which is the natural result  
 “ of liberty in the excess. ‡”

By the Salic law, it appears “ that any freeborn man who had killed  
 “ a Frank, or a Barbarian, or any other person who lived, accord-  
 “ ing to the Salic law, was to pay 200 gold sols or pence, by way  
 “ of fine. That 300 pence was the fine for killing a Roman, who  
 “ may be qualified to sit at the king’s table. Whoever shall be  
 “ convicted for the murder of a Roman, who is a man of independ-  
 “ ent property, shall be obliged to pay a fine of 100 gold pence.  
 “ Whoever has killed a tributary subject, who was a Roman, shall  
 “ be liable to the fine of 45 gold pence.” §

\* Pope’s Translation of the Iliad, Book 9, v. 743.

† Ib. Book 18. v. 577.

‡ Tacitus de Morib. Germ. XII. et XXI.

§ Leg. Sal. Tit. 44.



Again, in another place, the same law provides, that “ who-  
 “ ever has killed a chief baron, or an earl or *graff*, who had been  
 “ one of the king’s household, shall be condemned to pay a fine of  
 “ 300 gold pence.\*

The law of the Ripuarians, another tribe of the Franks, in like manner decides, that, “ if a freeborn man has killed a Ripuar-  
 “ citizen, he is to be condemned to the payment of 200 gold sols or  
 “ pence.”†

In like manner, “ if a Ripuarian kills a Salian Frank, he must  
 “ pay 200 gold pence. The sum of 160 gold pence must be paid  
 “ for killing an Alleman or German, a Frisian, a Bavarian, a  
 “ Saxon, &c. If he has killed a Burgundian, he shall be, in like  
 “ manner, fined in 160 such pence. If he has killed a Roman,  
 “ who is not a subject of the Ripuarian king, he shall pay a fine of  
 “ 100 gold pence.”‡

The ancient Frisones, in like manner, punished murder by a fine. The laws of that people, in the compilation of Lindembroc, decree, that, “ if a nobleman hath killed another noble, he shall pay  
 “ 80 gold sols or pence ; but, if hath killed a simple citizen, he must  
 “ pay only 54 gold sols and one denier. The noble that kills a  
 “ franked servant, shall pay 27 gold pence, wanting one denier,  
 “ to his master, and nine pence to his nearest relations. A citizen  
 “ who had killed a nobleman was to be fined 80 gold sols ; and only  
 “ 53 and one denier, if he kill another citizen of the same rank  
 “ with himself. If a freed servant has killed a nobleman, he shall  
 “ pay 80 gold sols ; and only 53 and one denier for killing a simple  
 “ citizen.”

By the laws of Athelstan, king of the West Saxons from the year 924 to 940, all sorts of homicide, and even parricide, were

\* Leg. Sal. Tit 57. pars secunda.

† Lex Ripuar Tit. 7.

‡ Ibid. Tit 36.

punished by a fine or mulct. “ Whoever killed an archbishop or a  
 “ duke was fined no more than 15,000 thrysmas or groats, (about  
 “ £250. sterling.) The parricide of a bishop and the killing of  
 “ an earl was taxed at only 8,000 groats. A viscount’s life was  
 “ compensated by half that sum. The blood of a baron was esti-  
 “ mated at 2000 groats, which was also the fine and only punish-  
 “ ment for murdering a simple priest. Whoever killed any other  
 “ plain man, within the twelve days of Christmas, on the Sundays of  
 “ Easter and Pentecost, on Ascension Thursday, or on the festivals  
 “ of the Purification, Assumption and Nativity of the Blessed Vir-  
 “ gin Mary, or on the day of All Saints, was punished with a fine  
 “ of 40 shillings. Rape, robbery, and theft, were also punished  
 “ with 40 shillings fine.”\*

In the laws of William the Conqueror (being the same, as the title imports, which Edward the Confessor observed before him), we find the following :

“ If one man kills another, and confesses it, yet refuses to pay  
 “ the usual compensation, there shall be given out of his manbote  
 “ to the lord, for a freeman ten shillings, and for a villain twenty  
 “ shillings.—The *were* of a Thane in the Mercian and West Saxon  
 “ laws is twenty pounds, and by the same laws the *were* of a villain  
 “ is one hundred shillings.”

“ As to the *were*; for one who was of noble extraction, let  
 “ there be paid to the widow and orphans X<sup>s</sup>. and let the orphans  
 “ and the kindred divide the remainder between them.”†

“ Where a Frenchman is killed, and the men of the hundred do  
 “ not apprehend the murderer and bring him to justice within  
 “ eight days, so as that it may appear who committed the murder,  
 “ they shall pay in the name of murder 47 marks.”‡

\* Leg. Athelsst. Reg. *de diversis occisorum sanguinis pretiis*.

† Laws of William the Conqueror, published by Kelham, p. p. 25, 27.

‡ Ibid, page 47.

See more on this subject in the Welsh laws of Hywell Dha, and in Wilkin's *Leges Anglo-Saxonicae*.

Sir John Davis, Attorney General of Ireland in the reign of James the First, has been even more severe than Spencer in his condemnation of the Irish, for their practice of punishing the crime of murder by an *Eric*, or fine. In his "*Discovery of the true cause why Ireland was never entirely brought under obedience to the crown of England*,"\* he says, "For, if we consider the nature of the Irish custome, we shall finde, that the people which doth use them, must of necessitie be rebelles to all good government, destroy the Commonwealth wherein they live, and bring barbarism and desolation upon the richest and most fruitful land of the world. For, whereas by the just and honourable law of England, and by the laws of all other well-governed kingdomes and commonweals, murder, manslaughter, rape, robbery, and theft, are punished with death, by the Irish custome, or *Brehon lawe*, the highest of these offences was punished only by a fine, which they call an *Ericke*."—Here the learned Attorney General makes a great display of his extensive knowledge of the "honorable laws of England,—and of all other well-governed kingdomes and commonweals," yet he has not the justice and impartiality (though very estimable qualities in an Attorney General) to acknowledge, that the custom he condemns in the Irish had been constantly practised in his own country, and in several other nations not devoid of civilization.

If Sir John Davis had taken the pains to enquire fully into this subject, and had the candor to confess the truth, which he must have discovered from such enquiry, he would have given a picture

\* London edition 1747, printed from the edition of 1612. p. 167.

of the Irish laws widely different from what he has done. He would have discovered and acknowledged, that, by the Brehon laws, the crime of murder was not punished by an Eric, or fine only. He would have found that there were cases, in which the punishment of homicide, rape, and other offences of great magnitude, was death; and that in all cases the person convicted of murder, beside paying, either by himself or tribe, the prescribed Eric, was also deprived of his inheritance, and of all the rights, privileges, and immunities, to which he would be otherwise entitled amongst his tribe, or through the nation in general. He would also have found, that no place of sanctuary could afford protection to a murderer who had fled from punishment; but that every noble or privileged person, whether lay or ecclesiastical, with whom he might seek refuge, was obliged by the laws to surrender him to justice. Davis could have no excuse for not making the enquiry; the way to information was open before him; in his time the Brehon law was in full force, all through the nation, except within the English pale; and the Brehons or Judges were well known, and might be consulted. Even to the end of the reign of Charles the First, there existed schools, in which the Brehon laws were taught. Why did not he apply to some of these for information? The probability is, that he did apply, that he was well acquainted with the Irish law respecting Eric; but, as it was the fashion of the day, for political purposes, to vilify and debase the Irish character, he concealed his knowledge, knowing that a publication of the truth would tend to injure his own interests, and disoblige his patrons.

If none of the Brehon laws were now in existence, there are sufficient proofs, in the ancient manuscript annals of Ireland, to show, that the crime of murder was not punished merely by a fine; for numerous instances occur, in which it appears that the pain of

death was inflicted on perpetrators of that horrid offence. That the murderer was deprived of all his rights and privileges is evident from the laws still existing. In a tract, entitled "Pleadings in favour of senior succession to the sovereignty, according to law," published by the late General Vallancey, \* we find the following:—

" Cuis ele chuireas B. ó thighearnas, .i. B. do bheth fionghalach.  
 " .i. fuil a fhine fén do dortadh dó. Mar ader dergfhine i. an fine  
 " fionghalach. An fionghalach umurro berid fine a diobhadhsidhe  
 " & ni bherid a chion, & ni bhereannsomh diobhadh na fine &  
 " beridh a chion. Aseadh a chiallsin. .i. ge be neach dheargus a  
 " lamh ar a fhine fein ag dortadh a fola gurob fear fionghaile mur  
 " sin e, & nach coir a cor i ttighearnus. Agus fos ata do reir  
 " dlighidh nach ttéd a chion ara fhine (mur adertha cion comho-  
 " guis &c.) & go tted a edhracht a laimh a fhine ara shon sin.  
 " Gidheadh ma do ghéana an fionghalaeh peannait do Dhia & eric  
 " do dhuine ar son a mhighniomha do gebh a chuid ronna do  
 " edhreachta a athair & a sheanathair fén, & ni fhaghann cuid don  
 " fhearann edhreachta coitchinne, bhios ag an fhine uile. Agas  
 " ader dligheadh, *gu rataigheas & gui edireas & gu tuarasdal &*  
 " *goid & etheach & feall & fionghal & dúinetaidhe go tteasdan a*  
 " *laineneachlan ó dhuine fa gach énni diobhsin, & fechtar ma taid*  
 " *sin no eanchor diobh ar B. go tteasda a laineneachlan uadha, &*  
 " *ar na hadhbharaibh reamraite uili, gur [eagcur flaitheas ris &*  
 " *gurob do A. dleagar a thabhairt.*"—" Another cause excludes B.  
 " from the sovereignty, *i. e.* B. being a murderer, *i. e.* the blood of  
 " his own tribe has been shed by him. As it is said of a Deirgfine,  
 " *i. e.* a tribe of murder, *For the murderer, moreover, the tribe*

Collect. de. Reb. vol. I. page 407. The translation, for reasons obvious to the Irish Scholar, differs in some things from that given by the General.

“ *take his inheritance, but they take not upon them his guilt, and he*  
 “ *takes not of the inheritance of the tribe, and he bears his crimes.*”  
 “ The meaning of which is, *viz.* Whoever reddens his hand on his  
 “ own tribe, by shedding their blood, is therefore a murderer, and it  
 “ is not proper to place him in the sovereignty. And also it is ac-  
 “ cording to law that his crime shall not be imputed to his tribe,  
 “ (as it is said ‘ *the crime of a relation,*’ &c.) and that his inheri-  
 “ tance shall pass into the hands of his tribe on that account.  
 “ However, if the murderer does penance to God, and gives *Eric*  
 “ to man, he receives his share of the inheritance of his father and  
 “ grandfather, but he obtains not any portion of the land, the ge-  
 “ neral inheritance of which belongs to all the tribe. And the law  
 “ says, ‘ What establishes falsehood, and what gives fraudulent se-  
 “ curities, and what hires falsehood, and theft, and lies, and trea-  
 “ chery, and murder, and house-robbery, that full penalty shall be  
 “ levied off a man for each of these. And it is seen that if these,  
 “ or any of these, be fixed upon B. the full penalty shall be levied  
 “ off him ; and for all the aforesaid causes the sovereignty shall be  
 “ cut off from him, and it is lawful to give it up to A.”

Amongst the Seabright manuscripts, in the Library of Trinity  
 College,\* are to be found some very ancient fragments of laws on  
 murder, &c. from which the writer of these sheets would gladly have  
 made full extracts ; but was prevented by the strict regulations of the  
 College respecting the use of its manuscripts. He has, however, by  
 the liberality and patriotism of a gentleman, who possesses a good  
 modern copy of ancient laws, transcribed from vellum manuscripts  
 of high antiquity, been enabled to collect some information on the

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\* Class H. 53. p. p. 431 and 644, and class H. 54. p. 329, &c.

crime of murder, and on the manner in which the Eric was to be collected and distributed.

By a law-tract, regulating the property, &c. in bees, we find, that there were certain crimes, the perpetrators of which no sanctuary could screen from justice. “Acht seact neludaig do chuis in la \*  
 “fornaidm nemed Dé na duine ————— taid cu fomdíl agus  
 “elodaig Fine ; fer airmderg ; ben aslui a cáin lanamna ; acas ben  
 “no fer aslui gairi a mathair no athair, inge madh nech ná duine  
 “in neoch ma fo facebat duine oirngne di és fri imbi cóir do tintudh.”  
 “There are seven fugitives in the law, which are not protected  
 “by a *Neimhid* of either God or man.”†—————a lurking  
 “thief ; deserters from a tribe ; a man with blood-red arms ; ‡ a  
 “woman who flies from her matrimonial engagements ; a man or  
 “a woman, who flies from the assistance § of a mother or father ;  
 “the same of one who renders not justice after his theft ; for no  
 “*Neimhidh* of either God or man can afford protection to the man  
 “who leaves behind him plunder unrestored.”||

By another law we find that a man guilty of certain crimes, amongst which is included murder, was incapable of enjoying a superior rank in his tribe. Again, by another law, the *Dergfine*, or persons guilty of murder, were excluded from their portion of the tribal inheritance, because the tribe were obliged to pay for their crimes.

From the quotations just now given it appears, that the crime of murder not only excluded a man from the enjoyment of all the

\* The word here written *la* is a contraction commonly used in ancient law tracts to represent the word *FENECHAS*, or old law ; but, in the manuscript, the *l* has a short horizontal stroke drawn across it, which is a character not to be found in any fount of types hitherto cast. The reader is therefore requested to take notice, that, in these extracts, *la* is to be always understood to represent *Fenechas*.

† An ecclesiastical or lay noble.    ‡ A murderer.    § Who deserts a parent in necessity.

|| This law is to be found in the Library of Trinity College, H. 34, in that of the Royal Irish Academy, and in the collection of the writer.

rights and privileges to which he had been entitled amongst his tribe had he been innocent, but also that no sanctuary could protect him from punishment. It appears that fraud, falsehood, or the subornation of falsehood, theft, lies, treachery or robbery, deprived a prince of his right to inherit the sovereignty of his nation ; and that no power, ecclesiastical or lay, could screen from the vengeance of the law, the adulterous woman ; the deserter from his tribe ; the persons, male or female, who were insensible to the calls of nature, and fled from their parents in the hour of their distress. And, for so far, it can hardly be denied, that the ancient Irish laws had a more moral tendency than those of several *polished and civilized nations* of modern times.

Amongst the College manuscripts \* is to be found a law, that prescribes the proportions, in which *Eric* was to be levied and distributed amongst the members of a tribe ; from which the following extracts are given :

“ *Conall gaibais allainh do rot do dam sort hirroi contorchartar*  
 “ *fair inna landiri so is de ruccad la.† Cia ro it dire agus areir*  
 “ *acas enecland ? Saigid dire co secht cumal, saigid areir co cumal,*  
 “ *saigid eneclainn co tri seotu.*”

“ *Landire in athair, leth dire i mbrathair mathar, trian dire ina*  
 “ *mic no ina ingen, cethramthi diri inna ua, enecland o ta sen, acas*  
 “ *aireir acas a diburdud.*”

“ *Landiri i mathair, leth dire i siair mathar, trian dire inna*  
 “ *macse no inna ingen, cethramthu dire inna ua enecland ó ta, &c.*”

“ *Landire i mbrathair o athair, lethdire inna macside no inna in-*  
 “ *gin, trian dire inna ua, enecland ó tha.*”

“ *Lethdire i mbrathair o mhathair, trian dire inna macside no*  
 “ *inna ingen, cethramthe dire inna ua eneclann ó tha.*”

\* Class H. No. 34.

† See Note (\*) p. 194.



“ *An ti nad ail, nad gialla, nad ceile fuissethen ni hictar dire*  
 “ *nach airiur nach enecland la.*”\*

“ Whoever proceeds on a road, or passage, and is there killed,  
 “ the full penalty is given by the law. What is the penalty, the  
 “ satisfaction, and the reparation? The penalty extends to seven  
 “ cumals,† the satisfaction to one cumal, and the reparation to  
 “ three seots.‡

“ Full penalty in the father, half penalty in the father’s brother,  
 “ one third penalty in the son or daughter, a fourth of the penalty  
 “ in the grandson, reparations § from these out, together with sa-  
 “ tisfaction and expulsion.

“ Full penalty in the mother, half penalty in the grandmother,  
 “ one third of the penalty in the son or in the daughter, one fourth  
 “ penalty in the grandson, reparation from these out, &c.

“ Full penalty in the brother by the father, half penalty in his  
 “ son or in his daughter, one third penalty in his grandson, repa-  
 “ ration from these out, &c.

“ Half penalty in the brother of the mother, one third in his son  
 “ or daughter, one fourth in his grandson, reparation from these  
 “ out, &c.

“ He who has not fostered, nor given security, nor entered into  
 “ association with the aggressor, pays neither penalty, nor satisfac-  
 “ tion, nor reparation according to the old law.”

Here we see, that the Eric or atonement made for murder did  
 not exclusively fall on the blood relations of the malefactor, nor was  
 it entirely received by those of the person murdered. The fosterer

\* See note (\*) p. 194.

† A cumal was three perfect cows, or an equivalent thereto.

‡ Seot or seod signifies a thing of value; a jewel, a cow. The commentator on this passage explains it by three *Colpachs* (heifers or steers) or two heifers and a *Samhaisc* (i. e. a calf upwards of a year old).

§ The Commentator says, “ the ninth or tenth degree of relations.”

was subject to the penalties incurred by the crimes of his *Dalta*,\* and he was also entitled to a portion of any fines or reparation that might be made for injuries done to the person fostered.

A *Fuidhir* or person holding lands by tenure from a lord, not of his own tribe, was exempt from fines for offences committed, either by himself, his sons, daughters, family or relations; nor did he receive restitution or reparation for any damages, or injuries, done to himself or any of those persons. The *Flaith* or prince, under whom he held his land, was subject to all his fines and penalties, and received the restitution or atonement for all the losses or injuries sustained by himself or his family.

We shall hereafter see how the *Eric* and fines, arising from offences committed by women or against them, were levied and disposed of, when we come to give specimens of the laws respecting females. At present, it is presumed, sufficient examples have been given to show what the law was, relating to *Eric* in general, as it was practised by the ancient Irish.

If the Irish laws for punishing offences by *Eric* be properly and dispassionately considered, it may, perhaps, be acknowledged, that it was not a barbarous law, but a wise and salutary measure, calculated to prevent crime, and to compensate, in some degree, persons who had suffered injury. Those who have studied human nature know, that there are persons who would not be deterred from the commission of crime, by the consideration of any consequences that might result to themselves from their misdeeds; but, if they be convinced, that the punishment of their offences will not fall

\* *Dalta* or *Dailte*, a foster child, a ward. Sir John Davis says, "Fostering hath alwayes  
" beene a stronger alliance than *bloud*; and the foster-children do love and are beloved of their  
" foster-fathers, and their Sept, more than of their owne natural parents and kindred; and do  
" participate of their meanes more frankelly, and do adhere unto them in all fortunes with more  
" affection and constancy." *Discovery*, &c. London, 1747, page 180.

upon themselves only, but that their parents, their wives, their children, and relations, must all participate in the pains and penalties to be imposed, they will desist from the perpetration of crime, through tenderness to their family and connexions. Again, let it be considered, that, according to the law, the Eric was to be imposed in a greater or lesser degree, upon the entire tribe to which the malefactor belonged, and it will be perceived, that it was the interest of every person to keep a strict watch on the actions of his tribesmen, and to prevent the commission of a crime, which would certainly bring loss upon himself and all his relations. By the payment of Eric, the malefactor was punished, and the person injured received some compensation for his losses: an act of justice more satisfactory, more equitable, and more productive of salutary consequences, than some of those sanguinary punishments prescribed by modern civilization.

The law of Eric, the candid and judicious Doctor Warner calls “ the law of retaliation.” Contrary to Spencer, Davis, and others, he says, “ that by the tenor of this law the people of Ireland were “ brought to more humanity, honesty, and good manners of every “ kind, than they ever were before.—It is not only the most equitable in itself, I presume to say, that can be conceived, against “ wilful injury, but in its consequences bids fairer than any other to “ promote public order and integrity.”—He adds, “ We presume “ too much on our power of making laws, and too far infringe on “ the command of God, by taking away the lives of men in the “ manner we do in England, for theft and robbery; and th’s is not “ only a pernicious error,—‘ for extreme justice is an extreme injury’— “ but a national abomination.—The wilfulness of the crime is no “ excuse for making the punishment exceed the heinousness of the “ transgression; and who will say that a little theft or robbery,—

“ perhaps of the value of two or three shillings only,—is not  
 “ punished infinitely beyond a just proportion, when it is punished  
 “ with death.”\*

The Irish laws of Tanistry and Gavelkind are represented by Sir John Davis as sources of the greatest evils to the nation. “ *Tanistry*,” he says, “ is the cause of such desolation and barbarism in  
 “ this land, as the like was never seen in any country, that professed  
 “ the name of Christ.” He adds, “ Yet I dare boldly say that never  
 “ any particular person, eyther before or since (the raigne of Henrie  
 “ the Second) did build anie stone or bricke house for his private  
 “ habitation, but such as have latelie obtained estates according to  
 “ the course of the law of England. Neither did any of them in all  
 “ this time plant any gardens or orchards, inclose or improve their  
 “ lands, live together in settled villages or towns, nor made any  
 “ provision for posterity; which, being against all common sense  
 “ and reason, must needes bee imputed to those unreasonable cus-  
 “ tomes, which made their estates so uncertaine and transitory in  
 “ their possessions.”—To the custom of *Gavelkinde*, Sir John attributes the poverty of the country. “ For,” he says, “ *Gavelkinde*  
 “ must needes in the end make a poore gentility.†

In these short quotations we have a melancholy proof of how hard a matter it is for men, even of liberal education, to divest themselves of prejudice, or to do justice to the character of those whom it may be their interest to vilify and traduce. The learned Attorney General must have well known, that the Irish did dwell in towns and villages long before his countrymen ever obtained a footing in Ireland; and also that they did build houses of stone

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\* History of Ireland, Dublin edition, octavo, vol. I. p. 258, 259; and History of Utopia, note, p. 42, 43.

† Discovery of the True Cause, &c. p. p. 170. 1. 2.

long before the period he mentions. The laws for regulating the affairs of *Raths* or villages, and the concurrent testimony of all our historians, prove the first; and the second is proved from equally good authority. The Irish Annals record the erection of several stone houses, and the *Seanchas bheg*, a very ancient law tract, grants privileges and assigns liberal rewards to artists skilled in the construction of such edifices. But even if the Irish houses were built of timber only, which, it is acknowledged, they generally were, how does it prove that the Irish people were barbarians? If dwelling in wooden houses were a proof of barbarism, the inhabitants of the great city of London were barbarous so late as the polite reign of King Charles the Second; for it was owing to the principal part of the houses being composed of timber, that the great fire, which happened in that city in the year 1666, was so destructive. That the Irish did enclose their lands, and plant gardens and orchards, he must have been an eye witness. Why he uttered a falsehood on this subject, the writer of this essay might assign reasons; but, at present, he chooses to leave it to others to conjecture.

That the Irish did enclose their lands, and that the preservation of those enclosures was provided for by laws, the laws themselves are incontestible evidence, independent of the authority of history. In the library of Trinity College, \* is to be found a fragment of a law-tract beginning "*Leath Cathach a tairsciodh, &c.*" that prescribes the manner in which fences for the enclosure of land should be constructed, and imposes heavy penalties for breaking through them. This fragment has been published by the late General Vallancey; † and, although the translation may not be quite correct,

\* Manuscript Room, Class H No. 54.

† Collect. 'de Reb. Hibern. vol. 3, p. 71.

it is sufficiently so to enable the reader to satisfy himself, that such a law exists, and that Davis is not to be depended on when he speaks of Irish laws and customs.

That the lands of Ireland were highly cultivated in former times, is proved from the marks of the plough being still visible on the tops of now uncultivated mountains, and from similar marks being daily discovered in the bottoms of our bogs. That the Irish had a superior skill in agriculture will, perhaps, be allowed, when it is known, that the irrigation of their lands was practised by them at a very early period. In an ancient law-tract on artificial water-courses, or canals, to be found among the manuscripts in the library of Trinity College;\* in that of the Royal Irish Academy; in the collection of the writer of this essay; and in some other private collections, we find the following:—" *Coibnius uisci toiridne hi finte-  
" daibh griain as as a tairnider, ar isse coibnius uisce tairidne la  
" fenechas tir as a tairidnither, ar isse don ailes each céit lá deo-  
" laidl sech na cricha olchena, air ni confes cate bunad ind uisce  
" ach a tir as a tairidnither."* " The common right of drawn-  
" water is in the tribes of the land from which it is drawn. For,  
" according to the Fenechas, the common right of drawn-water be-  
" longs to the land from which it is drawn. It is therefore that all  
" require, *that it shall run freely the first day over the entire  
" land.*† For the right in the water belongs to none but in the  
" land from which it is drawn."

It is confessed that the law of Tanistry, in the present state of society, is unnecessary, and would be inconvenient if put in prac-

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\* Manuscript Room, Class H. No. 34. page 26, and Class H. No. 54. p. 398.

† The commentator informs us, that the water thus drawn was applied on different days to different uses, and that no charge should be made for water thus applied to the use of the land.

tice ; but that it was so at its first institution, and even down to a comparatively late period, is denied. Tanistry had for its object the prevention of public commotion and disturbance, and the preservation of public peace. Whilst Ireland was ruled by her native monarchs, and governed by her own laws, the offices of Monarch, provincial Kings, and *Taoiseachs*, or chiefs of tribes, were hereditary in particular families, but elective in the persons. This custom, although it preserved the liberties of the people, and saved them from being governed by a man of imbecile mind, a woman, or a child, was the cause of frequent wars, and consequently of much blood-shed ; for, upon the death of a king or chief, different candidates of the same family became competitors for the vacant office, and each endeavoured to carry his election by the number of his adherents and the force of arms. To remedy this evil, and yet to preserve the rights of the people and the established mode of succession, by which the most worthy of the tribe should rule, the laws provided, that, during the life-time of the reigning monarch, king, or prince, a proper successor should be appointed. For this purpose, the persons having the power to elect assembled in a particular place, appointed for the purpose, and there, after mature deliberation, selected for their *Fear Tanaiste*, (i. e. their second man) that person amongst the family of their reigning prince, who, from his superior understanding, prudence, and courage, was most likely to rule over them with justice and wisdom, in times of peace, or lead them to victory in war. The choice seldom fell on the son of the chief in being ; but frequently his brother, or some other near relation, was appointed his successor, during whose subsequent government the son of the then chief might be elected Tanaist. But, notwithstanding all this precaution to prevent public commotion, upon the death of a king or prince a new candidate would often

start up in opposition to the Tanaist ; and, if his friends were sufficiently powerful to support him, seize upon the government. But in these contests it seldom happened, that the son of the deceased prince became the competitor of the Tanaist. Both the ancient customs and the express laws of the country were against his claims. For these provided, that the senior, if deserving, should be declared the *Ceannfinè*, or head of the tribe : a custom which was agreeable to the practice of other ancient nations, of which a striking example is given in the succession of the kings of Edom, in the first book of Chronicles, chap. i. beginning at the 43d verse ; to which might be added the authority of Strabo, to shew that the Scytho-Iberian kings were chosen from amongst the *seniors* of a particular class of the people, and also that the possessions of the people were held in common.\* In like manner Procopius shews, that, according to the royal succession observed by the Vandalic nation, the king should be always the *eldest prince* of all those who were descended in the male line from their king Geseric, without any regard being had either to their rank, or to the proximity of blood in which they stood relatively to the late king their predecessor on the throne.† The same author informs us,‡ that all the Gothic tribes, including the Vandals, observed the same laws and customs, and used the same language ; from which we may infer, that all the various nations of the Goths observed the custom of advancing to the office of chief the *senior* of their respective tribes. Similar practices in other ancient nations might, if necessary, be produced to prove, that the Irish were far from being singular in their laws respecting the appointment of their chiefs from amongst the seniors of their tribes.

\* Strabo. Casaboni, Paris, Folio 1620. Lib. 11. page 501.

† Procopius de Bell. Vandal. Lib. I. Cap. 7. 8.

‡ Lib. I. Cap. I.



By the custom of senior succession, or the succession of the *Fear Tanaiste*, women were excluded from taking a lead in the state ; but it is not true, that they were excluded from the inheritance of lands. If it would not extend this essay to an unreasonable length, examples might be given from the ancient Irish laws, sufficient to prove, that women exercised the right of chiefry over lands, properly their own, and had a power to dispose of all their chattel property at their pleasure. A women was not, indeed, to inherit or enjoy the lands appropriated to the maintenance of the chief of the tribe ; but care was taken, that her own patrimonial lands should be secured to her, although she was deprived of the power to alienate or transfer those lands without the consent of her family. If her husband was of a tribe different from herself, he could not possess her lands after her decease ; but her sons, if she had any, should have the inheritance.

The custom of appointing, during the life time of a king or chief, a *Tanaist* to succeed him after his decease, was in use from almost the earliest periods of Irish history ; but it does not appear from the laws, that any lands were appropriated to the exclusive use of the *Tanaist*, as *Tanaist*. A portion of lands were, indeed, allotted as demesne lands, for the use of the chief during his incumbency, and which, at his decease, were not gavelled or distributed amongst the tribe, as the other lands were, which he held in common with them ; but the *Tanaist* had no control over those lands, nor any greater right to possess them than any other member of the sept, except such as he had in expectation from his situation as *Tanaist* to become the successor of the chief.

Some Irish historians assert that the *Tanaist* exercised the office of chief judge and principal commander of the armies of his chief ; but there is nothing in the Irish laws, nor is there any particular

instance or fact, given in the annals, which would prove that the power of judicature was ever vested in the Tanaist. That he had the principal command of the forces in the absence of his chief cannot be doubted; his situation, and his interests made him the most proper person to execute such an office; but, in all wars where the chief was present in person, which he generally was, he alone had the sole command of the army.

From what we have now seen it is evident, that the custom of Tanistry could not be productive of those evils, which are attributed to it by Sir John Davis. Let us now take a view of the law of Gavelkind, and see what probability there is, that he has not misrepresented that custom also, and attributed to it evils that it never could have produced.

Some have imagined, that the ancient Irish held their lands upon a tenure similar to that by which the military benefices established by the Roman Emperors, and the Salic land of the Franks were held; but this is evidently an error. The Irish lands were hereditary in the tribe, and could not be forfeited by or lost from the tribe, by any delinquency in the chief; who had only a life interest in the lands, and whose crimes could not be visited on the unoffending members of his sept, in any greater degree than the payment of an *Eric*, prescribed by the law in proportion to the offence. The Roman benefices, on the contrary, were not hereditary, and were liable to be forfeited by the possessor for a bare omission of civil duty, such as the neglect of discovering or not delivering a robber into the hands of justice, and other such offences as could not be considered grievous enough to cause the forfeiture of hereditary property.\*

\* Abbe Dubos, Hist. Crit. Tom. 4. p. p. 323. 324.

The custom of *Gabhail Ciné* (a partition of a family) or Gavel-kind, as it is called by English writers, has been but very imperfectly understood or explained by all who have hitherto published any thing on that subject. This is owing to those authors being unacquainted with the laws prescribing the mode of partition, and the proportions which each *Finè* or tribe was to receive on a partition of the tribal lands, or of the *Érics* or fines accruing to the sept. General Vallancey says, “ The Irish custom called Gavel-kind “ consisted in dividing the father’s hereditary lands among all his “ sons, utterly excluding the daughters from enjoying any share of “ the landed inheritance.”\* How far this account is correct, and at the same time what the real nature of the *Gabhail Ciné* was, may be collected from the laws on that subject amongst the manuscripts in the library of Trinity College.†

The inhabitants of every district in Ireland were divided into the following *Finés*, tribes or families, viz :—“ *Geil-Finé ; Deirbhfiné ; Tar-finé ; Ind-finé ; Derg-finé ; Dubh-finé ; Finé-taccur, Glas-finé ; Ingen-ar-meraib, and Dua-finé. Here ends the Finés or tribes.*” The members and proportions of these tribes are set down as follows :—

1. “ *Geilfine co cuicer, is iside gaibhes dibad cach cuid comocuis “ di nech dibhadh uaidhe.*” *Geilfiné* extends to five persons. It is it that receives the inheritance of their (own) relations who die.

2. “ *Deirbhfine co nonbar, ni dibadh uaidhe cobrand for lín “ cend comocuis.*” *Deirbhfine* extends to nine persons ; “ the inheritance of those who die is equally divided amongst the relations.” The Commentator on this passage adds, “ with *athghabhail*,” i. e. *resumption of property*, “ to the persons before mentioned.”

\* Collect, de Reb. Hib. † Class H. No. 54.

3. “ *Iarfine, co tri feraibh déc, ní beiride acht cethramhain di cin no somhaine, di orba, na di saetur.* ” “ Iarfine to thirteen, they obtain but one fourth of the inheritance of wealth, or land or labour” (*i. e.* the fruits of industry). The Commentator says, with *athghabhail*, to the two tribes above mentioned, for three quarters of four belong to the *Geilfine*.”

4. “ *Indfine co sect firu déc, conranda cadesin finteda di neoch díba uaide, amail bes coir ; duthaigh duine otha sin, is ann scarait fintedha.* ” “ Indfine to seventeen men, they divide between them the inheritance of such as die from amongst them, in the manner that is just ; from this out it is a country, or district, of people, for in this the tribes divide.” The Commentator explains the latter part of this by saying, “ from this out it is not a landed property of *Finés*, or tribes, but a land of “ people,” *i. e.* in common to the people.

5. *Dergfine, isside cruies, ní díba huaide, ní cobranaide finnted, issedh icaid cinta comocuis.* “ Dergfine are those who spill blood (*i. e.* who commit murder) they receive no inheritance, they are not coparceners with the tribes, they pay the forfeits of their relations.”

None of the other *Finés*, above mentioned, appear to have had right to any proportion of the property gavelled ; but they had a common right to the land for their support.

From the Monarch down to the chief of a district, each had lands allotted in proportion to his rank and dignity ; and, in addition to these lands, the law provided for them other sources of revenue, which amply supplied them with all things necessary to support their state. These were furnished to each by their respective followers or dependents. They consisted not in money, but in articles of all descriptions necessary for the supply of the table ; in clothing of the

most sumptuous kinds ; in instruments of music and other articles for amusement in the chamber ; in dogs, hawks, &c. for the diversions of the field ; in ships, horses, military instruments, &c. &c. &c. All these were paid according to established rules, and in the proportions prescribed by the *Leabhar na cceart*, or book of rights ;\* and no king or prince had a legal right to levy more.

For the support of a chief or petty prince of a district, independent of his own mensal lands, each *Rath*, village, or settlement of people, was obliged to contribute in proportion to the quantity of lands occupied by the *Rath*, and these proportions were regulated by law. The *Raths* were of different ranks, and their possessions various. The laws respecting them are interesting and curious, but extracts from them here would too much extend this essay.

Upon the subjects of gavelling and resumption of land, there is much interesting information to be collected from the ancient laws amongst the manuscripts in the Library of Trinity College. But, although the writer of this essay has had an extraordinary indulgence in his access to those manuscripts, and although he can never sufficiently express his sense of the obligations which he feels himself under to the board in general, for their kindness in admitting him to the privilege of the Library, or express his gratitude for the polite, indeed friendly, attention he has experienced in his visits to the Library from the Librarians of the College in particular, he has still to regret, that the strict rules of the College, with respect to their manuscripts, have prevented him from making that use of those valuable documents which he would wish to have done, and which

\* Ancient copies of this Book are to be found in the Libraries of Trinity College, and the Royal Irish Academy. For a description of this Book, and an account of its contents, see "*Transactions of the Ibero-Celtic Society*," page 28.

would, perhaps, have enabled him to make this production more interesting than it is at present. The author submits, that, if the same facilities were allowed to the Irish scholar to consult the numerous ancient manuscripts in his native language, deposited in the College Library, that are allowed to the readers in the printed part of the Library, it is probable, that, notwithstanding the little encouragement given to literary productions connected with Ireland, some instructive and interesting articles on the ancient state of our country might have long since been laid before the public.

It has been urged as an argument against the customs of Tanistry and Gavelkind, that women were excluded from the inheritance of landed property. It is not, however, strictly true, that women were so excluded. They were, indeed, by the laws debarred from a participation in those lands that were subject to be gavelled; but there are sufficient examples in those laws to shew, that women did possess landed property, and might dispose of chattel property, although they had not a power to alienate any of their lands from the tribe to which they belonged. But, supposing that Irish women did not enjoy landed property, the same must be said of the women of several other ancient nations. There is not, perhaps, a single instance to be found in the Old Testament where sisters shared with their brothers the landed inheritance of their father; and it is notorious, that the Romans, Franks, and other ancient nations, excluded women from the possession of lands that must be defended by the sword, as well as they did from the sovereignty.

It has been also asserted, that the law of Gavelkind was a bar to the improvement of the country, inasmuch as no man would improve land that he knew would not be enjoyed by his children. This also is a falsehood. The uncultivated state of Ireland, at the commencement of the seventeenth century, arose from causes quite

different from any that could result from the law of Gavelkind. It arose from a long period of near 500 years sanguinary warfare, carried on by the natives on one side, in defence of their natural rights and liberties, and on the other by the English colonists, to establish their dominion over the island. It is not true, that the man possessed of lands would not improve his possessions, under the impression that they would not be enjoyed by his children, his relations, and his friends, who were to survive him. He was not apprehensive that a libertine son or an unnatural brother would exclusively enjoy the fruits of his industry : for he knew that his deserving children, if he had children, would be amply provided for ; and, if he had no children, his tribe, which to an Irishman was no small object of regard, must profit by his improvements. It is true, that mansions constructed of brick or stone were not generally used by the people of Ireland ; but this does not prove, that they had not durable, and even sumptuous buildings for their private dwellings. Whoever has read the splendid descriptions of buildings to be found in the popular tales of the ancient Irish, must be convinced, that they could not be merely the effects of a fertile imagination ; but that their authors must have had models before their eyes, from which they gave pictures, highly coloured to be sure, but which prove that they drew from originals.

By the quotations above given, and the authorities referred to in ancient manuscripts, it is apparent, that the customs of Tanistry and Gavelkind could not be productive of those evils which are attributed to them by Sir John Davis, and others, who, without examination, have re-echoed his words. The same authorities also give us good grounds to doubt the veracity of Sir John's assertion that " Gavelkinde must needs in the end make a poor gentility." The riches of an Irish chieftain consisted in a number of hardy and

faithful followers, with the means to support them and to reward the deserving. These he enjoyed, and with these he was content. He took no pride in the life of a voluptuary, nor in the prospect of having one son born to loll in a carriage, and to be furnished with means to lead a life of luxury and libertinism. Neither had he the heart-breaking consideration, that some of his more deserving children would be, perhaps, compelled to prostitute their talents to unworthy purposes ; or by a resort to the gambling-house, or by other infamous means, plunder the unwary and inexperienced, in order to procure for themselves the means of *appearing like gentlemen*. The necessity of resorting to such villainous shifts was prevented by the law of Gavelkind. The custom was therefore so far from being barbarous or productive of the evils attributed to it, that it may be considered as the source of many salutary consequences, and supplied the means of support, in an honorable way, to every member of the tribe, and precluded the necessity of poor laws or mendicity associations.

The learned Attorney General blames the *poor* Irish gentry, because “ they did scorne to descend to husbandry or marchandize, or “ to learn any mechanicall art, or science.”\* If this were a crime, it is one in which they are imitated by the *poor* Irish gentry of the present day ; for we do not see the hopeful young slips of modern nobility or “ gentility” much more desirous to make themselves useful in their generation, by learning a mechanical art, than were the sons of the ancient Irish chieftains. But, be this as it may, it is a fact, that, although the Irish gentry did not descend to husbandry or marchandize, or to learn any mechanical art or science, they gave liberal encouragement to those who followed such occupation. This is

\* *Discovery of the True Cause, &c.* London, 1747, p. 172.



indisputable. The old code of laws called the *seanchas bheg*, so often above mentioned, provides, in a munificent manner, privileges and rewards for the encouragement of professors in various arts and sciences. Hence it was, that the ancient Irish exceeded all the other European nations in the manufacture of woollen cloths, which they exported to England as well as to several other nations on the continent.\* A lucrative branch of commerce, that gave employment to numerous hands, and of which Ireland, for the benefit of England, was unjustly deprived in the reign of King William the Third.

In addition to those laws, already referred to, there are a variety of ancient laws, still extant, which were well calculated to protect property, to reward merit, to discountenance vice, and to encourage virtue. There was no class of people, from the highest to the lowest, but were amenable to justice, nor was there one law for the rich and another for the poor; but to all justice was administered with impartiality. To prevent extortion, the prices of almost every article were regulated by law, even to the value of labour and the fees to physicians.

By a law tract in the College library,† the prices of a variety of articles are determined. A part of this tract has been published by the late General Vallancey;‡ but what he has given as a translation is, in many places, not at all like the original. It may, however, serve to give the reader, who does not understand the Irish language, some idea of the nature of its contents. Appendant to a large volume of considerable antiquity, on the practice of medicine, in the

\* See an Essay on “*The Antiquity of the Woollen Manufacture in Ireland*,” by the late Earl of Charlemont, published in the first volume of the Transactions of the Royal Irish Academy.

† Class H. No. 34.

‡ Collect. de Reb. Hib. vol. 1.

collection of the writer of this essay, there is a law tract prescribing the fees to be paid to physicians upon the recovery of the patients from sickness, and regulating other matters connected with the professions of surgery and medicine. How liberally the practitioners in these sciences were to be rewarded *upon the recovery of their patients*, the following extract from the beginning of that tract will show.—“ *Bretha Crolige. Cis lir ro suidiged crolige la fēe ? co direnaiter, co errenaiter, co ottruiter. Direnar crolige mbais caich fomiad. Da secht Cumal crolige cach righ agus cach epscop. Secht cumal agus leth croilige cechtar de in da airigh forgill istaire, inunn ota airig nard conig airech tuisi. Vii cumal croilige cach airech tuisi, agus cach airech desa corige bo airech. Teora cumal crolige cach bo airech acas cach oc airech. Di cumal crolige cach flescach acas cach mogadh.*”—“ Law of sickness. What is established relating to the cure of sickness? That it be satisfied for, that amends shall be made for it, that it be rewarded. Every honorable lord satisfies for the cure of death sickness” (*i. e.* sickness in which there is danger of death;) “ twice seven *Cumals*,\* for healing the sickness of every king and of every bishop. Seven *Cumals* and a half for the curing of either of the two inferior *Airechforgill*;† the same satisfaction from the *Airechard* down to the *Airech tuisi*; seven *Cumals* for cure from every *Airech tuisi* and every *Airech desa* down to the *Bo Airech*. Three *Cumals* for the healing of every *Bo Airech* and every *Oc Airech*. Two *Cumals* for the cure of a rustic or slave.”

\* A cumal was three cows, or the value thereof.

† *Airechforgill*. *Airech* was a title of honor and respect with the ancient Irish. The *Airech forgill* was the person considered a sufficient hostage or pledge for the person of the chief: the *Bo-airech* was the lowest in degree, he derived his rank from his property in cattle.

In the laws relating to women,\* the penalties they incur for crimes and the *Eric*s or mulcts paid for injuries done to them, are divided amongst certain persons of their tribes in established proportions.

“ *Cis lir ro-suighighide fodla febhe la Fenechas fria bandire ?*  
“ *co icaither a cinaid ? co berdar a neirce acas a ndithbha ?*

“ How are established the distinctions of the rights appertaining to women, according to the old law ? How are their offences satisfied ? How are their *Eric*s and their inheritance distributed ?

“ *Cin cetmhuintir for a mic for a finé is amlaid fria eric acas a*  
“ *ndibad.*” The offences of one of a chief family falls upon her sons and upon her tribe ; in like manner her *Eric*s and her inheritance are distributed.”

“ *Mad cetmhuintir nad ruicce macu confodlaiter a cinside inde etir*  
“ *a fine acas a cele is amlaid fria eiricc acas a dibad.*”—“ If she be  
“ one of a chief family, who has borne no sons, her trespasses are  
“ equally divided between her tribe and her husband. In like man-  
“ ner are distributed her *Eric* and her inheritance.”

“ *Os ben aittiten ara naisc fine conranaiter a cinaidside etir ma-*  
“ *cu acus a fine is amlaid fria neraic acas a ndibad.*”—If a woman  
“ protected under bond to the tribe, her trespasses are equally di-  
“ vided between her sons and the tribe, in like manner her *Eric*  
“ and her inheritance.”

“ *Os ben nad aurnascar nad forngar ar da trian fora fine dia cin*  
“ *oentrian for a bronnfine, is amlaid fria ericc acas a ndibad.*”—If  
“ a protected woman not under bond or control, two thirds of her  
“ trespasses fall on her tribe and one third on her *bron fine* (*i. e.* the  
“ family of her womb, her children) : in the same manner her *Eric*  
“ and her inheritance.”

\* MSS. in the Library of Trinity College. Class H. No. 34.

“ *Os ben bis for focsul dar apud nathar no fine, la fine a neraic*  
 “ *acas a ndibad, acas fer fo do coisle a cin acas a ciniud.*”—“ If a  
 “ woman be forced away against the will of her father or her tribes,  
 “ to the tribe belong her *Eric* and her inheritance, and on the man  
 “ with whom she went fall her fines and trespasses.”

It would, perhaps, be superfluous to give here further examples to show how the crimes of women were atoned for by their tribes, or how the *Eric*s or mulcts paid for injuries sustained by them were distributed amongst the tribe to which they belonged. It may not, however, be improper to remark, that any woman, who had not by crimes or ill conduct brought damages or injuries on her tribe, had a right to dispose of all her chattel property to the Church ; but she had no power to dispose of any part of the property belonging to the tribe without having obtained their consent for that purpose. Contracts entered into by women were generally invalid ; for, without the consent of her *head*, (the guardian or the person under whose control she was,) she could not make any legal transfer of property. A father had control over the actions of a daughter, the chief family controlled a woman of such family, sons had a control over a mother who had children, a tribe controlled a woman of a tribe, the Church had control over a woman belonging to the Church. But although a woman could not buy or sell, or enter into contracts without the consent of her *head*, she might, with the approbation of her *head*, enter into contracts, and dispose of whatever was lawful for her to transfer in a public manner. If the husband of a woman was guilty of adultery, she had a power to separate from him ; but upon no other occasion was a woman allowed to part from her husband.

If children above a certain age committed a fault, or did any injury to any person, the atonement was to be made in equal propor-

tions by the father and the foster-father of the child ; and in the same proportion was divided between them the *Eric* or mulct for any injuries it might sustain.

To prevent theft, severe pains and penalties were provided by the old law, for the punishment of persons convicted of dishonesty. We have already seen, at page 194, that no sanctuary could protect a thief who had not made reparation or restitution for goods purloined by him. The person from whom stolen goods were purchased was liable to make, upon discovery, full restitution ; but the purchaser, who paid full value for his purchase, was not liable to any other penalty on account of such transaction. The accessory to theft was liable to the same penalty as the actual perpetrator of theft ; because, said the law, “ if a man be not encouraged he will not steal.”\*

To show the means used to prevent improper intercourse between the sexes, sufficient of the laws are still in existence. By these it appears, that the person who was convicted of the sin of incest was, in addition to heavy fines, to be expelled from the place where the crime was committed, and cut off from all privileges he might otherwise enjoy. He who committed adultery or fornication was subject to a penalty or fine. Married persons who were convicted of the crime of adultery, besides the usual reparation by *Eric* required by the law, were put under a penitential rule until their death. If a woman broke her marriage vow, and was guilty of adultery, if she had land, it became the property of her husband during her life ; in addition to which he had to receive from her father, if alive, a fine or mulct for her offence. If her father was not living, and that she belonged to a chief family, that family was obliged to make reparation. If she had sons, they were obliged to pay for the scandal and

\* See MSS. in Trin. Coll. Class H. No. 53 and No. 54.

the injury. If she belonged to a common tribe, that tribe should pay the forfeit of her crime.\*

Even for minor offences, the Irish laws provided proper remedies and modes of punishment. To prevent damages, or waste of property, by animals of every description, or by the neglect of persons having property in charge, punishments by fine were also provided, besides the full value of the damage being paid to the injured proprietor. Nor were the moral characters of persons unprotected by the laws, which prescribed penalties to be inflicted on the slanderer and the calumniator.

IX. *Observations on the difficulties attending a translation of the Brehon Laws.—Recapitulation.—Conclusion.*

A translation of the *Brehon Laws* has been represented by some writers as a matter of extreme difficulty, and by others as a thing absolutely impossible. The late Charles O'Connor of Balanagar, whose authority, on subjects connected with Irish Antiquities and literature, must always have considerable weight, has declared, that “ the Irish jurisprudence was almost entirely confined to the Phœnian “ dialect, a dialect understood only by the *Brehons*, and law-advo- “ cates, and a few who had the curiosity to study our language.”— He adds, “ I have had an opportunity of conversing with some of “ the most learned Irish scholars in our island, and they freely con- “ fessed to me, that to *them*, both the *text* and *gloss* were equally “ unintelligible. The key for expounding both was, so late as the “ reign of Charles the First, possessed by the Mac Egans, who kept “ their law-school in Tipperary, and I dread that since that time it “ has been lost.”† Doctor Ledwich, although utterly ignorant of

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\* MSS. in Lib. Trin. Coll. Class H. No. 53.

† Ledwich's *Antiquities*, edition 1803, page 303.

*every* dialect of the Irish language, fearlessly asserts that a translation of the Brehon Laws is “ a thing impossible.”\* These authorities, at first sight, might appear sufficient to persuade a man whose curiosity might be easily gratified, without the trouble of investigation, that an attempt to translate the Brehon Laws would be an unavailing experiment. Yet these authorities should not deter the Irish scholar from making the attempt. They are, in fact, to be considered as no authorities. Charles O’Conor does not say, that he himself had studied the Brehon Laws, and found by his own experience that they were not to be deciphered. He only says, that he was told by some Irish scholars that “ to *them* both *text* and *gloss* “ were equally unintelligible.” But this is not sufficient to prove that they are equally so to all others. As for the assertion of Ledwich, that “ the thing is impossible,” it can have no weight with any person acquainted with the language, history, and antiquities of our country ; who must perceive that the book, which he has miscalled the “ Antiquities of Ireland,” is, from the beginning to the end, a mass of misrepresentation and falsehood, that proves nothing more than the self-sufficiency of its author, and his utter ignorance of the genuine History and Antiquities of Ireland.

It must be admitted, that a translation of the Brehon Law would be a work of considerable labour and difficulty ; but to a man of industry and talent, who has a thorough knowledge of the ancient Irish language, the accomplishment of such a task is by no means impossible ; nor would it, perhaps, be so difficult as at first view it may appear. The *text* of all our law books is in the Fenian dialect ; but it is accompanied by an interlined *gloss*, which, in more modern language, explains the terms contained in it. Both text and gloss are, it is confessed, obsolete, and to the person who is acquainted with only the vulgar dialect of the modern Irish must be unintel-

\* Ledwich’s Antiquities, edit. 1803, p. 302.

ligible ; but to those whose knowledge of the ancient language is more extensive, the case is otherwise. When Mr. O'Connor wrote, there was no dictionary of the Irish language that contained above eighteen or twenty thousand words. A translation of the Irish laws would, at that time, be therefore attended with great labour and difficulty. But now that there is an Irish Dictionary containing upwards of fifty thousand words, many of which are extracted from the ancient laws, and from other very ancient manuscripts, it is submitted that the principal difficulty attending a translation of the Brehon Laws is removed.

It would be irrelevant to the subject proposed by the Royal Irish Academy, to point out the method for reading and studying our ancient law books : but it may not be improper to say, that he, who intends to study those remains of Irish jurisprudence, must begin by making himself master of the contractions, with which they abound ; and of the *Ceannfhocthas*, or change of initials, which disguises the orthography, and throws great obscurity on the subject, and on the meaning of the words.

In the foregoing pages we have taken a view of some of the subjects treated of in the ancient laws of Ireland, of which copies of great antiquity are known to be still extant. From the existence of these copies it is evident, that those, who have denied that the ancient Irish had written laws, have either been misinformed themselves, or wished to mislead others. We have seen, from the concurrent testimony of all our historians, the catalogue which we have given of ancient lawgivers, and the internal evidence of the laws themselves, that the Irish institutes were formed at a very early period ; and we have arguments before us in support of the opinion, that those laws suffered no very great change from the time of their first enactment to the commencement of the 17th century, except so



far as they might be influenced by the introduction of the Christian religion, and by an improved state of civilization. From this view, and from the authority of candid and liberal English writers, referred to in the second section of this essay, it may be inferred, that a publication of those laws, accompanied by a literal translation, must furnish to the historian and antiquary much curious information, and throw considerable light on the manners and customs of the ancient inhabitants of several continental nations, as well as on those of Great Britain and Ireland. But it is to the people of Ireland in particular that a publication of the Brehon laws would be of the greatest importance ; because such a publication would be the best means of refuting the slanders of those who have thrown an odium on the character of our ancestors, in consequence of their attachment to those laws.

By some of those, who acknowledge that the ancient Irish had laws, it has been asserted that those laws produced anarchy and confusion, that by their effects they debased the human mind, reduced to the most savage barbarism the people who were governed by them, and caused this fruitful country to become a barren desert. Of those who have made this assertion, Sir John Davis may be considered the principal ; and, from his high situation, as Attorney General of Ireland, and the means he had of obtaining the best information on the affairs of the country, his authority is generally considered as incontrovertible. On this account his assertions respecting the laws of tanistry and gavelkind, and the ancient custom of compensating for murder by the payment of an *Eric* or fine, have been fairly examined, in the course of this essay ; and, to remove from the Irish character that obloquy which Davis and others have heaped upon it, a fair statement has been given of what those laws really were. In this statement, the writer has contrasted

the Irish laws of *Tanistic* or senior succession, of gavelkind, and of the compensation and atonement for crime by the payment of an *Eric*, with some of the ancient laws of England and other nations, not with a design of fixing the stigma of barbarism on those nations, but to show that Ireland was not singular in the practice of such laws and customs.

But the calumnies of Sir John Davis, of Spencer, and of others, who have re-echoed their slanders, have had a widely extended circulation; and the Irish have patiently lain under them for the long period of two hundred years, without scarcely attempting to shew their falsehood and injustice. The writer of this essay does not flatter himself with the hope, that his feeble efforts to remove long-confirmed prejudices, and to rescue from obloquy the character of his ancestors and those of his countrymen, can be effectual in the fullest extent: but he has a hope, that what he has advanced may have some weight with the candid and the liberal, so as to induce them to make further enquiries before they, on the authority of prejudiced writers, believe that immorality and barbarism are the characteristics of a nation, heretofore distinguished by the glorious appellation of "*Insula Sanctorum et Doctorum.*" To completely expose the falsehood of Davis, and others of his description, the most effectual mode would be to publish those laws, which they have taken so much pains to misrepresent. The writer would therefore call upon his countrymen in general, to step forward, whilst it is not yet too late; and, by the aid of the press, to rescue from oblivion the Brehon Law, under which their ancestors were governed, when Ireland was, by all, acknowledged to be "*the refuge of learning and the nurse of science.*"

In the course of this Essay, the writer has placed such of the Brehon Laws as he has touched upon fairly before the reader. It

is shewn, by quotations from those laws, that the murderer was not, as has been asserted, suffered to escape from further punishment by merely paying an *Eric* or fine as a compensation for his offence ; but that he was cut off from the society of his family ; that no sanctuary could protect him from justice ; and that, though he might in some cases escape with life, he was deprived of all the rights and privileges to which he would have been entitled, if he had not been guilty of bloodshed. It is shewn, that the custom of Tanistry or senior succession was a laudable one, observed by many other ancient nations ; and that, in this country, it was not productive of those evils attributed to it by Davis and others. It is shewn, that agriculture, so far from being neglected, was carried on to a great extent ; and that irrigation, which is considered a modern improvement, was provided for by law. It is shewn, that arts and sciences were encouraged in an extraordinary degree by the liberal rewards which the laws provided for their professors. And, it also shewn, that the law of Gavelkind was not productive of evil, or such as from its nature must produce barbarism, in those by whom it was observed. On the contrary, although the practice of it might be inconvenient in the present state of society, it is shewn, that, while practised in Ireland, it was a just and equitable law, by the operations of which every man, who had not by crime forfeited his birth-right, was ensured a sufficient maintenance, and a supply of all things of which he might stand in need. By the law of Gavelkind, although there might be “ a poore gentility,” no person could be in absolute poverty, and the necessity of poor laws and Mendicity Associations was utterly precluded.

In the course of this essay, it has also been shewn, that no privilege, lay or ecclesiastical, could protect from justice the thief, who had not made restitution for the property he had purloined ; the

woman who had broken through her matrimonial vows; the person male or female, who had unnaturally fled from the calls of their parents; or the man who had deserted from his tribe. It is shewn, that fornicators, adulterers, and persons convicted of the crime of incest, were severely punished, each in proportion to the enormity of his offences. It is in like manner shewn, that bearing false witness, or the subornation of false witness, fraud of every description, falsehood, treachery, robbery, or murder, were crimes which deprived a prince of his right to govern, and subjected him to all the penalties, which, for similar crimes, were usually inflicted on persons of the lowest rank. And, to secure the impartial administration of justice, the law provided, that the judge who should be convicted of having pronounced an unjust decision should be stigmatized with a brand inflicted on his face.

On the whole, it is submitted, that there is sufficient evidence produced to prove that the ancient Irish laws dispensed impartial justice to all, that they encouraged genius and talent, punished vice and promoted virtue, and that, by the strict observance and impartial administration of those laws, the Irish people became so much in love with justice, as to compel even Sir John Davis to acknowledge, that “there is no nation of people under the sunne that doth love  
 “equall and indifferent justice, better then the Irish; or will rest  
 “better satisfied with the execution thereof, although it bee against  
 “themselves; so as they may have the protection and benefitt of  
 “the lawe, when uppon just cause they do desire it.”\*

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\* Discovery of the true cause, &c. London 1747, page 283.

# APPENDIX.

*X. Alphabetical list of subjects, on which ancient Irish Laws are to be found amongst the Manuscripts in the Library of Trinity College, Dublin.*

|                             | Numbers in<br>Class H. |                                    | Numbers in<br>Class H. |
|-----------------------------|------------------------|------------------------------------|------------------------|
| Adultery .....              | 34, 53                 | Districts .....                    | 54                     |
| Agreements .....            | 34, 53, 54             | Dower .....                        | 34, 53                 |
| Aireachs .....              | 54                     | Eneclans .....                     | 54                     |
| Animals, &c. ....           | 53                     | Equity .....                       | 53                     |
| Apparel .....               | 53, 54                 | Eric .....                         | 34, 53                 |
| Arms .....                  | 53, 54                 | Expulsion .....                    | 54                     |
| Arson .....                 | 54                     | Fairs .....                        | 54                     |
| Bees .....                  | 34, 54                 | Fals .....                         | 34, 53, 54             |
| Banishment .....            | 54                     | Family agreements and arrangements | 53, 54                 |
| Biatachs .....              | 53                     | Fathers .....                      | 53, 54                 |
| Bishops .....               | 54                     | Feasts .....                       | 34                     |
| Bond feudists .....         | 34                     | Females, rights of .....           | 53                     |
| Bonds .....                 | 54                     | Feuds or feudists .....            | 34, 53                 |
| Boundaries .....            | 54                     | Fines .....                        | 53, 54                 |
| Brehons .....               | 54                     | Fines or tribes .....              | 34, 53, 54             |
| Breithidh Neimhidh .....    | 54                     | Foreigners .....                   | 54                     |
| Bridges .....               | 53                     | Forgiveness of crimes .....        | 53                     |
| Brothers .....              | 53, 54                 | Fornication .....                  | 34, 53                 |
| Brughaidhs .....            | 53, 54                 | Fosterage and Fosterers .....      | 34, 53                 |
| Burnings .....              | 54                     | Fugitives .....                    | 53                     |
| Cattle .....                | 34, 53, 54             | Fuidhir or Feudists .....          | 34, 53, 54             |
| Children .....              | 54                     | Gavels .....                       | 53                     |
| Churches .....              | 53, 54                 | Gifts .....                        | 53                     |
| Cities .....                | 53                     | Gold .....                         | 34, 54                 |
| Clothes .....               | 53, 54                 | Grazing .....                      | 53, 54                 |
| Clergy .....                | 53                     | Homicide .....                     | 34, 53, 54             |
| Contracts .....             | 34, 53, 54             | Horses .....                       | 54                     |
| Copper .....                | 34, 54                 | Hostages .....                     | 53, 54                 |
| Crimes .....                | 53, 54                 | Hounds .....                       | 54                     |
| Criminals .....             | 53                     | Hurling .....                      | 54                     |
| Death feasts .....          | 34, 53                 | Incest .....                       | 53                     |
| Debts .....                 | 53, 54                 | Incendiaries .....                 | 53                     |
| Debtors .....               | 53                     | Inheritance .....                  | 53, 54                 |
| Dissolution of tribes ..... | 53                     | Joint-partners in land .....       | 54                     |

|                                                     | Number in<br>Class H. |                                           | Number in<br>Class H. |
|-----------------------------------------------------|-----------------------|-------------------------------------------|-----------------------|
| Judges .....                                        | 54                    | Punishments .....                         | 54                    |
| Kings .....                                         | 54                    | Queen .....                               | 53                    |
| Lands (under a variety of circum-<br>stances) ..... | 34, 53, 54            | Ranks, persons of different .....         | 53                    |
| Larceny .....                                       | 54                    | Rape .....                                | 54                    |
| Lay-monks .....                                     | 34                    | Raths or villages .....                   | 34, 53, 54            |
| Leases .....                                        | 34                    | Redemption of pledges, hostages, &c. .... | 54                    |
| Limbs, loss of .....                                | 54                    | Regavelling of lands .....                | 53                    |
| Lepers .....                                        | 53                    | Resumption of lands .....                 | 53                    |
| Loans .....                                         | 53                    | Rewards .....                             | 53, 54                |
| Maiming .....                                       | 54                    | Robbery .....                             | 53, 54                |
| Malt .....                                          | 34, 53                | Sales of land, &c. ....                   | 54                    |
| Manslaughter .....                                  | 53, 54                | Seanchas mor .....                        | 34, 53, 54            |
| Marriage .....                                      | 53, 54                | Securities .....                          | 53, 54                |
| Men .....                                           | 53, 54                | Services .....                            | 53                    |
| Metals .....                                        | 53                    | Sheep .....                               | 54                    |
| Minors .....                                        | 34, 53                | Ships .....                               | 54                    |
| Monks .....                                         | 34                    | Silver .....                              | 34, 54                |
| Mortgages .....                                     | 53, 54                | Slavery .....                             | 34                    |
| Mothers .....                                       | 53                    | Sons .....                                | 53, 54                |
| Murder .....                                        | 53, 54                | Succession to lands .....                 | 53                    |
| Neimhidhs, superiors or nobles ...                  | 54                    | Swine .....                               | 54                    |
| Night, offences committed at ...                    | 54                    | Theft .....                               | 34, 53, 54            |
| Nobles .....                                        | 54                    | Thieves .....                             | 53                    |
| Obligations .....                                   | 53, 54                | Timber .....                              | 53, 54                |
| Offences .....                                      | 53, 54                | Transfer of lands .....                   | 54                    |
| Partners in land .....                              | 54                    | Treachery .....                           | 54                    |
| Physicians .....                                    | 54                    | Trespases .....                           | 34, 53, 54            |
| Pledges .....                                       | 53, 54                | Tribes .....                              | 34, 53, 54            |
| Plunder .....                                       | 53                    | Verbal agreements and contracts ...       | 34, 53, 54            |
| Poets, &c. ....                                     | 34, 54                | Victuals and victuallers .....            | 53                    |
| Possessions .....                                   | 34, 53, 54            | Villages .....                            | 34, 53, 54            |
| Prices of various articles .....                    | 34                    | Virgins .....                             | 53, 54                |
| Princes and chiefs .....                            | 53, 54                | Warriors .....                            | 54                    |
| Privileges .....                                    | 53, 54                | Waste .....                               | 54                    |
| Professors of arts and trades .....                 | 54                    | Water .....                               | 34, 54                |
| Promises .....                                      | 53                    | Whoredom .....                            | 54                    |
| Property, disposal or division of ...               | 53, 54                | Witnesses .....                           | 53                    |
| Prostitutes .....                                   | 54                    | Women .....                               | 34, 53, 54            |
| Protections .....                                   | 34, 53, 54            | Wounds .....                              | 54                    |

A good copy of laws upon the principal part of the subjects mentioned in the above catalogue, formerly made for the Gaelic Society of Dublin, are now in the possession of Charles Patrick O'Neill, Esq Post Office, Dublin. Another copy, and some ancient laws of considerable antiquity, written on vellum, are in the Library of the Royal Irish Academy. There are also some very ancient vellum manuscripts, containing some laws not mentioned in the foregoing catalogue, and some modern copies of laws on the principal subjects above-mentioned, in the collection of the author of this essay.